COMMENTS

Center for Environmental Law Prize-Winning Comment

Planting Trees Whose Shade We Shall Never Sit in: Comparing Future Generations' Right to a Healthy Environment in Pennsylvania and the Inter-American System

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I. INTRODUCTION

In 2021, the Supreme Court of Pennsylvania heard a case regarding royalty revenue streams generated by the sale of oil and gas extracted from Pennsylvania lands.[1] In *Pennsylvania Environmental Defense Foundation v. Commonwealth*, 255 A.3d 289 (Pa. 2021) ("*PEDF*"), the court found that the diversion of funds into a general fund violated the Commonwealth's Environmental Rights Act (ERA), which protects Pennsylvania citizens' right to "clean air, pure water and to preservation of the natural, scenic, historic, and aesthetic values of the environment."[2] However, the court also recognized a second right protected by the ERA.[3] The court found that the second clause of the ERA protects a "common ownership of the people [of Pennsylvania], *including future generations*, of Pennsylvania's public natural resources."[4] The recognition of the rights of future generations is particularly interesting in an American context because it is relatively rare.[5] However, in the rest of the world, recognizing a right to a healthy environment that exists in generations yet to come is gaining traction.

Although the United States does not recognize the rights of future generations in its federal constitution, eighty-one other nations do.[6] These constitutions recognize future generations as rights holders that have a stake in a clean environment.[7] So, the question becomes how did this idea of future-generations-as-rights-holders make its way into Pennsylvania jurisprudence? And what might such a development mean for the future of climate litigation in the U.S.? This Comment intends to tackle exactly these questions by comparing *PEDF*, with a case from the Inter-American Court of Human Rights (IACtHR): *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 420 (Feb. 6, 2020)

1. Pa. Env't Def. Found. v. Commonwealth, 255 A.3d 289, 292 (Pa. 2021).

2. *Id.* at 296; PA. CONST. art. I, § 27.

3. *Pa. Env't Def. Found.*, 255 A.3d at 296.

4. *Id.* (citing Robinson Twp. v. Commonwealth, 83 A.3d 951, 954 (Pa. 2013)) (emphasis added).

5. Kristin Hunt, *What the Landmark Youth Climate Change Case in Montana Could Mean for Pa.*, PHILLYVOICE (Aug. 22, 2023), https://www.phillyvoice.com/montana-youth-climate-change-case-pennsylvania (noting that out of all fifty states, only Montana, Hawaii, New York, and Pennsylvania include environmental rights amendments in their respective state constitutions).

6. Daniel Bertram, *'For You Will (Still) Be Here Tomorrow:' The Many Lives of Intergenerational Equity*, 12 TRANSNAT'L ENV'T L. 121, 128 (2023).

7. *Id.* at 123.

("*Lhaka Honhat*"). This Comment will examine the IACtHR's jurisprudence specifically because it has a growing body of environmental jurisprudence that has only just started to peak, much like that of the Pennsylvania court system. Thus, by examining these two cases, this Comment is able to compare intergenerational jurisprudence in each respective jurisdiction. In doing so, one can see how these seemingly disparate cases are actually in conversation with one another and represent a growing legal avenue with which to tackle climate change.

II. PENNSYLVANIA'S PUBLIC TRUST

PEDF stems from amendments to the Pennsylvania Fiscal Code made by the Pennsylvania General Assembly.[8] The amendments in question diverted royalty revenues generated from oil and gas leases on state forest and game lands to the state's general fund.[9] The plaintiffs, the Pennsylvania Environmental Defense Foundation, argued that such amendments violated Article I, Section 27 of the Pennsylvania Constitution, also known as the Environmental Rights Amendment.[10] The Pennsylvania Supreme Court's decision built upon both previous jurisprudence and the legislative intent of the original drafters of the ERA. With that in mind, it is worthwhile to examine that history in order to see how and why the court came to its decision in *PEDF*.

A. Legislative Intentions of the ERA

Although adopted in 1971,[11] the ERA was first proposed by State Representative Franklin L. Kury in 1969.[12] The original proposal, House Bill 958, is nearly identical to the final amendment the General Assembly eventually adopted.[13] H.B. 958 provided:

> The people have a right to clean air, pure water, and to the preservation of the natural scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources, including the air, waters, fish, wildlife, and the public lands and property of the Commonwealth, are the common property of all the people, including generations yet to come. As

8. Pa. Env't Def. Found. v. Commonwealth, 255 A.3d 289, 292 (Pa. 2021).
9. *Id.*
10. *Id.*; *see also* PA. CONST. art. I, § 27.
11. PA. CONST. art. I, § 27.
12. John C. Dernbach & Edmund J. Sonnenberg, *A Legislative History of Article I, Section 27 of the Constitution of the Commonwealth of Pennsylvania*, 24 WIDENER L.J. 181, 187 (2015).
13. *See* PA. CONST. art. I, § 27; *see also* Dernbach & Sonnenberg, *supra* note 12, at 188.

> trustee of these resources, the Commonwealth shall conserve and maintain them in their natural state for the benefit of all the people.[14]

In his address to the Pennsylvania House, Rep. Kury pointed out that the original version of Pennsylvania's Declaration of Rights only enshrined the political and civil rights of Pennsylvania citizens.[15] Notably, Rep. Kury also cited the growing concern of climate change as a main reason for the need for environmental rights protections.[16] In his address Rep. Kury stated, "Preservation of our natural resources and environment is of fundamental importance. In fact, if mankind does not solve the challenge of saving his environment, all of the other great world problems we face may well become moot."[17] He went on to list the rights that H.B. 958 proposes to establish,[18] and finished his address by urging his fellow legislators to act urgently "to preserve the public estate for the *generations yet to come*."[19] In another address, Rep. Kury again made reference to "unborn generations" as those for whom the environment must be protected.[20] Additionally, Rep. Kury referred to the state government as "trustee of [the state's] natural resources,"[21] thereby implying that the ERA makes the people (and by extension, unborn generations) beneficiaries of the natural environment.

Pennsylvania's House voted to affirm H.B. 958 in 1969,[22] and the Senate followed suit, voting to affirm the bill on its third consideration in

14. Dernbach & Sonnenberg, *supra* note 12, at 188.

15. H.R. JOURNAL, 153d Gen. Assemb., Reg. Sess., at 485-86 (Pa. 1969) (statement of Rep. Franklin Kury), *reprinted in* Dernbach & Sonnenberg, *supra* note 12, at 188-92 ("The protection of . . . our environment, has now become as vital to the good life . . . as those fundamental political rights.").

16. H.R. JOURNAL, *supra* note 15, at 486, *reprinted in* Dernbach & Sonnenberg, *supra* note 12, at 189 ("Our physical environment has been depleted and damaged to the point where there is a serious question as to how long mankind can biologically exist on this planet.").

17. *Id.*

18. H.R. JOURNAL, *supra* note 15, at 486, *reprinted in* Dernbach & Sonnenberg, *supra* note 12, at 190.

19. H.R. JOURNAL, *supra* note 15, at 486, *reprinted in* Dernbach & Sonnenberg, *supra* note 12, at 191 (emphasis added).

20. H.R. JOURNAL, *supra* note 15, at 721-22, *reprinted in* Dernbach & Sonnenberg, *supra* note 12, at 197.

21. H.R. JOURNAL, *supra* note 15, at 722, *reprinted in* Dernbach & Sonnenberg, *supra* note 12, at 197.

22. H.R. JOURNAL, *supra* note 15, at 725, *reprinted in* Dernbach & Sonnenberg, *supra* note 12, at 210.

1970.[23] After the legislature struck some clarifying language,[24] the bill returned to the House floor for concurrence, where Rep. Kury again made an address. There, Rep. Kury specifically outlined that the second and third clauses of the proposed amendment grant "the common property right of all the people, including generations yet to come, in Pennsylvania's natural resources."[25] Further, Kury clarified that the bill imposes on the state not only a responsibility to conserve and maintain resources owned by the state, but also those resources that involve a public interest, even if the state does not own them.[26] Kury finished his address by noting that the striking of clarifying language was not to exclude those areas of the environment from state protection, but to prevent courts from interpreting the amendment too narrowly.[27] At the time, many legal minds were excited at the possibility of the ERA's passage, but were concerned that the amendment would become merely a statement of policy rather than create an enforceable legal right.[28] One legal theorist, Robert Broughton,[29] even went so far as to posit that H.B. 958 made it so that Pennsylvania adhered to the public trust doctrine. Finally, the House and Senate each passed the bill in 1971 before putting it on the ballot for the people of Pennsylvania to vote on.[30] When the people voted for the amendment, they gave themselves a legal right to a healthy

23. *Amendments to the Constitution on Third Consideration and Final Passage*, S. JOURNAL, 154th Gen. Assemb., Reg. Sess., at 1081-82 (Pa. 1970), *reprinted in* Dernbach & Sonnenberg, *supra* note 12, at 214.

24. Throughout the affirmation process, the legislators struck out clarifying language that existed in the original draft the bill, such as "including the air, waters, fish, wildlife, and the public lands and property of the Commonwealth." Dernbach & Sonnenberg, *supra* note 12, at 212; H.B. 958, No. 2860 (Pa. 1970); *see also* H.B. 958, No. 1307 (Pa. 1969) (striking out "in their natural state").

25. *Senate Message: Amended House Bill Returned for Concurrence*, H.R. JOURNAL, 154th Gen. Assemb., Reg. Sess., at 2271 (Pa. 1970); *reprinted in* Dernbach & Sonnenberg, *supra* note 12, at 217.

26. Dernbach & Sonnenberg, *supra* note 12, at 217; H.R. JOURNAL, *supra* note 25, at 2271-72.

27. H.R. JOURNAL, *supra* note 25, at 2272, *reprinted in* Dernbach & Sonnenberg, *supra* note 12, at 217 ("The adjustment in the language . . . will avoid any possible restrictive interpretation based on a theory that the enumeration of these four items, (air, waters, fish and wildlife) in the bill should be interpreted as an indication of legislative intent to limit the trusteeship of the Commonwealth to only these four categories").

28. Robert Broughton, *Analysis of HB 958, The Proposed Pennsylvania Environmental Declaration of Rights*, H.R. JOURNAL, *supra* note 25, at 2272, *reprinted in* Dernbach & Sonnenberg, *supra* note 12, at 220.

29. Broughton, *supra* note 28, at 2273, *reprinted in* Dernbach & Sonnenberg, *supra* note 12, at 221.

30. Dernbach & Sonnenberg, *supra* note 12, at 274.

environment.[31] Now that the intent of the ERA's drafters is established, how was the amendment viewed by the courts?

B. Judicial Degradation of the ERA

Soon after the ERA was passed, the supreme court of Pennsylvania decided its first major case dealing with an alleged violation.[32] In *Commonwealth v. National Gettysburg Battlefield Tower*, Pennsylvania sought to enjoin a corporation working in cooperation with the National Park Service from building a tower near the Gettysburg battlefield.[33] In the Commonwealth's words, "The tower as proposed . . . would disrupt the skyline, dominate the setting from many angles, and still further erode the natural beauty."[34] The only statute that the court considered was the ERA, as there was no other statute under which the Commonwealth could challenge the proposed construction.[35] The court ultimately decided against the Commonwealth, holding that the ERA was not self-executing and that supplemental legislation was required before the amendment could be made effective.[36]

In *Payne v. Kassab*, the court further narrowed the scope of the ERA by adopting a three-part test to determine when the ERA was violated.[37] The test is:

> (1) Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth's public natural resources?
>
> (2) Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum?
>
> (3) Does the environmental harm which will result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom that to proceed further would be an abuse of discretion?[38]

The effect of *Payne* and *Nat'l Gettysburg* was that the ERA lost all of its bite. Instead of enumerating enforceable legal rights to a healthy

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31. *See* Representative Franklin L. Kury, PA. H.R., J. RES. 3 (Question and Answer Sheet) (1971), *reprinted in* Dernbach & Sonnenberg, *supra* note 12, at 269-73.

32. John C. Dernbach & Marc Prokopchak, *Recognition of Environmental Rights for Pennsylvania Citizens: A Tribute to Chief Justice Castille*, 53 DUQ. L. REV. 335, 339 (2015).

33. Commonwealth v. Nat'l Gettysburg Battlefield Tower, 454 Pa. 193, 195 (Pa. 1973).

34. *Id.*

35. *See id.* at 197.

36. *Id.* at 205.

37. Payne v. Kassab, 468 Pa. 226, 247 (Pa. 1976).

38. *Id.* at 248 n.23.

environment for Pennsylvanians, the ERA was now a non-self-executing amendment with no supplemental legislation that required an unworkable three-part test in order to seek damages.[39] This degradation of the ERA continued until *Robinson Township v. Commonwealth* in 2013.

In *Robinson*, the court was once again confronted with a challenge pursuant to the ERA. There, the *Robinson* Court said that it would focus on the language of the statute itself.[40] The court found that Section I of the Pennsylvania Constitution affirms that all Pennsylvania citizens have "certain inherent and indefeasible rights," among which Section 27 is included.[41] The court continued that, along with other provisions of Pennsylvania's Declaration of Rights, the ERA "articulates principles of relatively broad application."[42] This stood in contrast to the court's previous holdings, and the court recognized that, saying, "jurisprudential development . . . in this area [of Section 27] has weakened the clear import of the plain language of the constitutional provision . . . these precedents do not preclude recognition and enforcement of the plain and original understanding of the [ERA]."[43] Thus, the *Robinson* court gave themselves permission to interpret the plain language of the ERA without worrying about prior precedent.

Following this line of reasoning, the court reasoned that, because the ERA creates rights in "the people," legal challenges under the ERA may proceed if either the government infringes on citizens' rights or the government fails in its trustee obligations to protect the environment.[44] Further, the court found that the ERA establishes two separate rights in the Commonwealth,[45] to which government regulation is inferior.[46] The first is the right to clean air and pure water, and preservation of the environment.[47] Moreover, the court found that the term "preservation" implies that the Commonwealth has a duty to protect the environment from harm and to maintain and perpetuate "an environment of quality for

39. *See* Pa. Env't Def. Found. v. Commonwealth, 255 A.3d 289, 296 (Pa. 2021) (noting that the Court previously held that the *Payne* test was incompatible with the ERA).

40. Robinson Twp. v. Commonwealth, 623 Pa. 564, 633-34 (Pa. 2013) ("In the process of interpretation, our ultimate touchstone is the actual language of the Constitution itself . . . The Constitution's language controls and must be interpreted in its popular sense, as understood by the people when they voted on its adoption.") (cleaned up).

41. *Id.* at 642 (quoting PA. CONST. art. I, § 1).

42. *Id.*

43. *Id.* at 644.

44. *Id.* at 645.

45. *Id.* at 646.

46. *Id.*

47. *Id.*; *see* PA. CONST. art. I, § 27.

the benefit of future generations."[48] The court also affirmed that the rights articulated in the ERA are not merely aspirational, but represent an actual obligation on the part of the government to refrain from violating those rights.[49] Finally, because air and water quality are not absolute, the court instructed that the government is obligated to protect against both actual and likely degradation to the air and water quality.[50] The ERA also protects the people's right to natural, scenic, historic, and esthetic values of the environment.[51] As with the first right to clean air and water, the government has a duty to ensure that its decisions neither permit actions causing actual harm nor those likely to harm these environmental values.[52]

The *Robinson* court found that the second right reserved by the ERA is the present and future Pennsylvanians' common ownership of public natural resources.[53] Though this right may seem narrower than the first right, the court reasoned that the phrase implicates broad aspects of the environment and is amenable to related changes in legal and societal concerns.[54] Furthermore, as instructed by Rep. Kury, the *Robinson* court found that "public natural resources" over which the people have common ownership includes state-owned resources along with private resources that implicate the public interest.[55]

Finally, the *Robinson* court recognized that the third clause of the ERA establishes a public trust doctrine wherein the Commonwealth's natural resources are the corpus of the trust, the Commonwealth is the trustee, and the people of the Commonwealth are the named beneficiaries.[56] Further, the duties and powers attendant to the trust do not rest exclusively in any one branch of government. The court found that the plain text of the ERA permits "the checks and balances of government to operate in their usual fashion for the benefit of the people in order to accomplish the purposes of the trust."[57] As trustee, the Commonwealth's responsibility is both to refrain from harming the corpus of the trust (the

48. *Robinson Twp.*, 623 Pa. at 647.
49. *Id.*
50. *Id.* at 649.
51. *Id.*; *see* PA. CONST. art. I, § 27.
52. *Id.* at 650.
53. *Id.* at 651.
54. *Id.* at 652.
55. *Id.*
56. *Id.* at 653.
57. *Id.* at 655.

environment),[58] and to protect it from harm.[59] In summation, the *Robinson* court gave the ERA the teeth that it was missing for decades, and reinforced the intergenerational aspect of the ERA as an incentive for the state to be forward thinking in its environmental protections.[60] Though the *Robinson* decision was only a plurality, future cases adopted its holdings concerning the ERA, setting the stage for *PEDF*.

C. PEDF's Intergenerational Determination

In *PEDF*, the Pennsylvania Supreme Court heard arguments regarding amendments to the Fiscal Code which diverted royalty revenue from oil and gas leases on state lands to the General Fund.[61] In a previous proceeding, the Pennsylvania Environmental Defense Foundation argued that the amendments violated the ERA.[62] The court followed its holding in *Robinson*, finding that revenue generated from the sale of gas extracted from public lands constituted the sale of trust assets and should be returned to the corpus of the trust.[63] However, due to insufficient advocacy, the court was unable to adjudicate whether three other types of revenue streams—upfront bonus payments, yearly rental fees, and interest penalties for late payments—violated the ERA.[64] On remand, the Commonwealth Court determined that the remaining revenue streams did not constitute the sale of trust assets and were not required to stay in the corpus of the ERA trust.[65] Instead the income could be distributed between two classes of beneficiaries supposedly created by the ERA: 1) current Pennsylvania residents that were considered life tenants; and 2) future generations treated as remaindermen.[66] The lower court also found that one-third of the revenues could be used for non-trust purposes and the remaining two-thirds should be returned to the trust.[67] The

58. *Id.* at 656.
59. *Id.* at 657.
60. *Id.* at 659 ("The second, cross-generational dimension of Section 27 reinforces the conservation imperative: future generations are among the beneficiaries entitled to equal access and distribution of the resources, thus, the trustee cannot be short-sighted.").
61. Pa. Env't Def. Found. v. Commonwealth, 255 A.3d 289, 292 (Pa. 2021).
62. *Id.*
63. *Id.*
64. *Id.* at 292-93.
65. *Id.* at 293.
66. *Id.*
67. *Id.*

Pennsylvania Supreme Court found this reasoning to be erroneous and reversed.[68]

Firstly, the Pennsylvania Supreme Court found that the text of the ERA does not distinguish between current Pennsylvanians and future generations, and that both are included in the defined beneficiary: "all the people."[69] Because there is no delineation between current and future generations, the beneficiaries of the trust are simultaneous, not successive.[70] In other words, the state does not owe a future duty to preserve the environment for future generations that it must eventually make good on. Instead, future generations are currently owed a healthy environment for them to eventually enjoy. Thus, the *PEDF* court followed the *Robinson* court's holding that future generations are entitled to equal access and distribution of public resources.[71] Additionally, interpreting the ERA to encompass both current and future generations establishes that both generations have equal interests, as opposed to competing interests.[72] The inclusion of both generations as simultaneous beneficiaries prevents the people from succumbing to bias towards present consumption by current generations at the expense of future generations.[73] Thus, the court held that there is no basis for the allocation of revenue to life tenants because they do not exist.[74]

Finally, the court determined that no language in the ERA indicates income entitlement between the trusts.[75] Instead, the purpose of the trust is "the conservation and management of Pennsylvania's public natural resources."[76] Conservation of natural resources is, in and of itself, the benefit conferred to the beneficiaries by the ERA.[77] With this, the court dispelled the idea that the revenue streams could be allocated towards general budgetary matters "for the benefit of all the people." This is because, as discussed, "the people" encompasses more than just the current generation. "Understood in context of the entire amendment, the phrase 'for the benefit of all the people' is unambiguous and clearly indicates that assets of the trust are to be used for conservation and

68. *Id.*
69. *Id.* at 309; *see* PA. CONST. art. I, § 27.
70. Pa. Env't Def. Found., 255 A.3d at 310.
71. *Id.*
72. *Id.*
73. *Id.*
74. *Id.* at 310.
75. *Id.* at 311.
76. *Id.*
77. *Id.* at 312.

maintenance purposes."[78] Applying private trust law principles,[79] the court held that income generated from the at-issue revenue streams must be returned to the corpus of the trust because allowing allocation of income to the general fund would permit the state to use trust income for a non-trust purpose.[80]

III. THE INTER-AMERICAN SYSTEM'S RIGHT TO A HEALTHY ENVIRONMENT

Now that Pennsylvania's approach to future generations law has been analyzed, it is time to examine the approach that the Inter-American Court of Human Rights takes. Like the previous Part, the focus will be on one particular case: *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*.[81] However, this Part also pulls from other international jurisdictions when applicable. So, although the main focus is on the Inter-American system, there will be occasional input from other jurisdictions. But first, as with the previous Part, a brief history is in order.

A. A History of Future Generations

As mentioned previously, concerns over future generations existed in the international sphere long before they appeared in the U.S. In fact, references to future generations were made internationally beginning just after World War II.[82] Indeed, the Charter of the United Nations (UN) begins with, "We the peoples of the United Nations, determined to save *succeeding generations* from the scourge of war . . . ."[83] However, for decades after, concern for the rights of future generations essentially laid dormant, with the only mentions being in academic circles.[84] Then, in 1972, the UN held its Conference on the Human Environment in

78. *Id.* (citing Pa. Env't Def. Found. v. Commonwealth (PEDF II), 161 A.3d 911, 934-35 (Pa. 2017)).

79. *Id.* at 313 ("Pursuant to fundamental principles of private trust law, we cannot conclude that the Commonwealth, as trustee of the constitutional trust created for the conservation and maintenance of the public natural resources that are owned by 'all the people,' can divert for its own use revenue generated from the trust and its administration.").

80. *Id.* at 314.

81. Indigenous Cmtys. of the Lhaka Honhat (Our Land) Ass'n v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. Hum. Rts. (ser. C) No. 400 (Feb. 6, 2020).

82. Bertram, *supra* note 6, at 124.

83. *Id.*; U.N. Charter pmbl. (emphasis added).

84. Bertram, *supra* note 6, at 124-25 (noting that publications concerned with the rights of future generations from this time period include Garret Hardin's "The Tragedy of the Commons," and an essay by John Rawls in *A Theory of Justice)*.

Stockholm.[85] There, the UN adopted twenty-six principles that, at various points, made reference to ideals and goals meant to protect the environment for future generations.[86] However, the Stockholm Declaration refrained from giving guidance as to how to balance the interests of present generations with that of future generations.[87] Over the next few decades, the idea of intergenerational rights slowly continued to gain steam.[88] In 1987, the UN's World Commission on Environment and Development ("Brundtland Commission") defined sustainable development as "meeting the needs of the present without compromising the ability of future generations to meet their own needs."[89] In 1992, the UN Conference on Environment and Development in Rio de Janeiro built upon the Brundtland report by stipulating that the right to environmental protection must be met "equitably" and "on the basis of equity," respectively, in relation to future generations.[90]

Meanwhile, the Inter-American system began recognizing the right to a healthy environment as a human right in 1988.[91] Article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights ("Protocol of San Salvador") states, "1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation, and improvement of the environment."[92] However, the Protocol did not include the right to a healthy environment among those that the IACtHR has jurisdictional control over.[93] The American Convention on Human Rights (ACHR) is a

85. *Id.* at 125.

86. *Id.*

87. *Id.*

88. *See id.* at 127 ("[T]he principle became subsumed by other principles and instruments in a process that Catherine Redgwell describes as 'creeping intergenerationalization.'") (citing C. Redgwell, *Intergenerational Trusts and Environmental Protection* (Manchester University Press 1999)).

89. *Id.* at 125.

90. *Id.* at 126.

91. Luisa C. S. Gonçalves, *The Greening of the Inter-American Court of Human Rights: Environmental Protection Possibilities for Future Generations*, *in* REPRESENTING THE ABSENT, 27 STUD. OF THE MAX PLANCK INST. LUX. FOR INT'L, EUR. & REGUL. PROC. L. 291, 293 (Hélène Ruiz Fabri, Valérie Rosoux & Alessandra Donati eds., 2023).

92. *Id.* (quoting Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Nov. 17, 1988, O.A.S.T.S. No. 69 (entered into force Nov. 16, 1999) [hereinafter Protocol of San Salvador], *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L./V/II.82, doc. 6 rev. 1, at 67 (1992)).

93. Gonçalves, *supra* note 91, at 293.

vast human rights instrument consisting of eighty-two articles, guaranteeing various civil and political rights.[94] Because of this, and because the right is not listed under the substantive part of the ACHR,[95] the right to a healthy environment could not be directly demanded before the court for many years.[96] However, it remained possible to allege a violation of the right to a healthy environment when an offense caused violations of the rights that were protected by the American Declaration, the Convention, or the selected rights of the San Salvador Protocol under the doctrine of reflex protection.[97]

B. Slow Growth in the Courts

The first case in which the IACtHR implemented reflex environmental protection was *Indigenous Community Awas Tingni Mayagna (Sumo) v. Nicaragua* ("*Awas Tingni*").[98] But first, as a brief preface, it is worth clarifying a key procedural difference between U.S. courts and the Inter-American system. In the Inter-American system, plaintiffs are first required to go to the Inter-American Commission on Human Rights before they go to IACtHR. According to the IACtHR's website, only party states and the Commission can submit cases to the IACtHR.[99] Additionally, the Commission may only refer cases to the IACtHR with respect to states that have ratified the ACHR and recognize the jurisdiction of the IACtHR.[100] Though not immediately relevant to the discussion, this procedural aspect is important to keep in mind as this Comment examines cases before the IACtHR.

Decided in 2001, *Awas Tingni* concerned the Awas Tingni community's property rights to the lands it lives on. In 1994, the

94. Thomas Buergenthal, *The American Convention on Human Rights: Illusions and Hopes*, 21 BUFF. L. REV. 121, 122 (1971).

95. *Id.*; *see* American Convention on Human Rights, O.A.S.T.S. No. 36, 1144 U.N.T.S 123 (entered into force July 18, 1978) *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82, doc. 1 rev. ¶ 25 (1992).

96. Gonçalves, *supra* note 91, at 293.

97. *Id.* at 293-94.

98. *Id.* at 294; Mayagna (Sumo) Awas Tingni Cmty. v. Nicarágua, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. Hum. Rts. (ser. C) No. 79 (Aug. 31, 2001).

99. *Frequently Asked Questions*, Inter-American Commission on Human Rights, https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/usersupport/faq.asp#:~:text=Only%20the%20States%20Parties%20and,stages%20provided%20for%20before%20it (last visited Apr. 9, 2024).

100. *Id.* (The states that have ratified the ACHR are Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, and Uruguay).

Community signed a forest management agreement with the company Maderas y Derivados de Nicaragua, S.A. ("MADENSA") and the Ministry of Environment and Natural Resources of Nicaragua ("MARENA").[101] In it, MADENSA and MARENA agreed to recognize the community's historical possession of the forest it lives within and to avoid undermining the community's territorial claims. Later, in 1996, Nicaragua, through MARENA, granted a thirty-year concession to the SOLCARSA corporation to "manage and utilize the forest."[102] The community made several attempts with various Nicaraguan authorities to halt the concession, but none were successful.[103] Because of this, the IACtHR found that Nicaragua violated the community's right to judicial protection under Article 25 of the ACHR.[104] Additionally, the Court held that Nicaragua violated the community's Article 21 right to private property.[105] Notably, the Court instructed that states must recognize the close ties that Indigenous communities have with the land that they live on.[106] This is because many Indigenous communities do not view land as a mere possession, but as a part of their cultures to be preserved and passed down to future generations.[107] Here, it can be seen that even before the IACtHR began recognizing an enforceable right to a healthy environment, the need to preserve land was still a concern.

The same was true in *Yakye Axa v. Paraguay*, where the Yakye Axa community attempted to reclaim their ancestral property after being relocated by English missionaries.[108] There, the Court found that Paraguay violated the community's rights to humane treatment,[109] fair trial, and judicial protection.[110] Further, the Court again found that their right to property was violated. It found that Paraguay violated the community's property rights by not taking "the necessary domestic legal steps to ensure effective use and enjoyment by the members of the Yakye Axa Community of their traditional lands,"[111] and that the state's failure

101. *Awas Tingni*, No. 79, ¶ 103(i); Gonçalves, *supra* 91, at 295.
102. *Awas Tingni*, No. 79 ¶ 103(k).
103. *See id.* ¶¶ 129-133.
104. *Id.* ¶ 139.
105. *Id.*
106. *Id.* ¶ 149.
107. *Id.*
108. Yakye Axa Indigenous Cmty. v. Paraguay, Merits, Reparations, and Costs Judgment, Inter-Am. Ct. Hum. Rts. (ser. C) No. 125, ¶¶ 50.12-50.16 (June 17, 2005).
109. *Id.* ¶ 156.
110. *Id.* ¶ 119.
111. *Id.* ¶ 155.

in this regard "has threatened the free development and transmission of their traditional practices and culture."[112] Again, the court respected the preservation of Indigenous people's ancestral lands, but only because rights other than the right to a healthy environment were violated. This trend continued before coming to a head in Advisory Opinion OC-23/17 ("Advisory Opinion").[113]

In 2016, Colombia requested the Advisory Opinion so that the IACtHR would spell out "State obligations in relation to the environment in the context of the protection and of the guarantee of the rights to life and to personal integrity."[114] In answering this question, the court took the opportunity to delve into the obligations that states have to protect the environment under the ACHR and why those obligations are in place.[115] First, the court emphasized the "existence of an undeniable relationship between the protection of the environment and the realization of other human rights," recognizing that the adverse effects of climate change impacts the enjoyment of those rights.[116] Furthermore, the court noted that this same relationship is recognized in the Protocol of San Salvador.[117] The court specifically pointed out that such a special relationship exists between Indigenous communities and their ancestral lands, and that states must take "positive measures" to protect and preserve those communities' special relationships with their lands.[118] Finally, the court noted that several other international bodies recognized the need to protect environmental quality.[119] Seemingly, the IACtHR was ready to join its international cousins.

Next, the court laid out what the right to a healthy environment entails. The court first found that the right to a healthy environment is

112. *Id.*

113. *See supra* note 91, at 296-97.

114. The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in Relation to Articles 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. Hum. Rts. (ser. A) No. 23 (Nov. 15, 2017).

115. *Id.* ¶ 46.

116. *Id.* ¶ 47.

117. *Id.*

118. *Id.* ¶ 48.

119. *Id.* ¶¶ 49-53 (the Court specifically references the OAS General Assembly, the European Court of Human Rights' recognition that environmental degradation may affect the well-being of individuals, the UN independent expert's recognition that human rights and environmental protection are interdependent, the Stockholm Declaration, and the Rio Declaration).

included in Article 26 of the ACHR's economic, social, and cultural rights.[120] The court then stated that the right to a healthy environment is both autonomous and separate from environmental content that arises from the protection of other rights.[121] Unlike those rights, the right to a healthy environment protects environmental components (such as forests or rivers) themselves, even when there is no risk to individuals.[122] In regards to specific duties, the court said that states have four key environmental obligations: "prevention, precaution, cooperation and . . . the general obligations to ensure the rights to life and to personal integrity."[123] Furthermore, the court noted that the right to a healthy environment belongs to both present and future generations.[124] Though the IACtHR finally spelled out the right to a healthy environment, it was not until 2020 that it would do so in a contentious case.

C. Lhaka Honhat Makes Good on the IACtHR's Advisory Opinion

Although decided in 2020, the facts of *Lhaka Honhat* began at least a century ago.[125] Several different Indigenous communities[126] lived on an area previously known as Fiscal Lots 14 and 55 in the department of Rivadavia in the Argentine province of Salta in the Chaco Salteno region.[127] Most of the Indigenous people that live on the contested lands are of the Wichí ethnic group.[128] Reports showed the Wichí people's important relationship with the land they live on as well as the danger posed by "the development of productive activities that are incompatible with their way of life."[129] Beginning in the twentieth century, non-Indigenous settlers and farmers, known as *criollos*, began occupying the contested lands as well.[130] The *criollos* engaged in livestock

120. *Id.* ¶ 57.
121. *Id.* ¶¶ 62-63.
122. *Id.* ¶ 62.
123. *Id.* ¶ 107.
124. *Id.* ¶ 59.
125. Katarzyna Zombory, *The Right to Cultural Identity in the Case Law of the Inter-American Court of Human Rights: A New Global Standard for the Protection of Indigenous Rights and Future Generations?*, 18 J. AGRIC. ENV'T L. 171, 178-79 (2023).
126. The communities identified on the land are the Wichí (Mataco), Iyjawa (Chorote), Komlek (Toba), Niwackle (Chulupí), and Tapy'y (Tapiete). Indigenous Cmtys. of the Lhaka Honhat (Our Land) Ass'n v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. Hum. Rts. (ser. C) No. 400, ¶ 47 (Feb. 6, 2020).
127. *Lhaka Honhat*, No. 400, ¶ 47.
128. *Id.* ¶ 49.
129. *Id.*
130. *Id.* ¶ 51.

farming, illegal logging, and erecting wire fences.[131] In 1902, the national government transferred 625 hectares of land to the *criollos*.[132] However, in 1905 the Salta government notified the Argentine government that these lots, which were adjudicated as national fiscal lands, may belong to the province.[133] Later, it was formally established that these lands belong to the province.[134]

In 1984, the Indigenous communities jointly requested Salta to grant them title to the contested lands.[135] Additionally, they contested the subdivision of the territory.[136] In 1987, Salta decided to recognize the land ownership of the occupants of Lot 55, whatever their "condition," who met certain requirements.[137] Over the next thirty years, the ownership of both lots would be litigated numerous times.[138] In 1998, the Indigenous groups, now recognized as the Lhaka Honhat Association of Aboriginal Communities ("Lhaka Honhat"),[139] filed a petition to the Inter-American Commission on Human Rights, seeking formal communal ownership of the lands.[140] Because of this, the government was required to divide the lands between the Lhaka Honhat and the *criollos*. Many different plans for dividing the lands between the Indigenous peoples and the *criollos* were proposed, though none were successful.[141] So, the Commission referred the case to the IACtHR in 2018.[142]

After visiting the disputed lots, the IACtHR found that the Lhaka Honhat had both ancestral ties to the land and a right to its ownership.[143] Further, the court determined that Argentina did not act diligently to ensure the Lhaka Honhat's right to its property.[144] Additionally, the court found that certain activities conducted on the land harmed the environment, food sources, and cultural identities of the Indigenous

131. *Id.* ¶¶ 257-266; *see also* Zombory, *supra* note 125, at 179.

132. Indigenous Cmtys. of the Lhaka Honhat (Our Land) Ass'n v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. Hum. Rts. (ser. C) No. 400, ¶ 51 (Feb. 6, 2020).

133. *Id.*

134. *Id.*

135. *Id.* ¶ 57.

136. *Id.*

137. *Id.* ¶ 58.

138. *See id.* ¶¶ 59-85.

139. *Id.* ¶ 61.

140. *Id.* ¶ 64.

141. *Id.* ¶¶ 65-85.

142. Zombory, *supra* note 125, at 179-80.

143. *Lhaka Honhat*, No. 400, ¶ 89.

144. *Id.*

people who lived there.[145] Due to these findings, the court held that several of the Indigenous peoples' rights were violated, including their right to property, right to a fair trial, and right to judicial protection.[146] The court also held that Argentina violated its obligations stemming from Article 1 paragraph 1 and Article 2 of the ACHR.[147] Notably, the court found that, due to the *criollos*' farming practices—specifically their erecting of fences, over-grazing by their cattle, and illegal logging—the *criollos* violated the Indigenous peoples' Article 26 rights to a healthy environment, adequate food, adequate water, and to take part in cultural life, impacting the expression of their cultural identities.[148]

Here, the court referred to its reasoning in its advisory opinion, finding that the right to a healthy environment is a universal value fundamental for the existence of humankind.[149] It also noted that Argentina recognizes that "every inhabitant enjoys the right to a healthy environment that is appropriate for human development and so that productive activities may meet present needs without compromising those of future generations."[150] It also noted that the Salta Constitution obligates the state to "protect the essential ecological processes and living systems on which human development and survival depend."[151] The court further instructed that Article 1(1) of the ACHR obligates states to both respect *and ensure* peoples' right to a healthy environment.[152] The court then determined that, pursuant to its obligation, states must "establish adequate mechanisms" to prevent both public entities and private individuals from infringing on people's right to a healthy environment.[153] Regarding the right to food, the court noted that food security is particularly important.[154] The court found that food security is related to food sustainability and insists that food be accessible for both present and future generations.[155] The court highlighted that similar considerations existed regarding the right to clean water.[156] Additionally, the court

145. *Id.*
146. *Id.* ¶ 168.; Zombory, *supra* note 125, at 180.
147. *Id.*
148. *Lhaka Honhat*, No. 400, ¶ 289.
149. *Id.* ¶ 203.
150. *Id.* ¶ 204; Art. 41, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).
151. *Lhaka Honhat*, No. 400, ¶ 204; Art. 80, CONSTITUCIÓN SALTA [CONST. STA.] (Arg.).
152. *Lhaka Honhat*, No. 400, ¶ 207.
153. *Id.*
154. *Id.* ¶ 220.
155. *Id.*
156. *Id.* ¶ 224.

pointed out that article 9 in Chapter III of the Social Charter of the Americas requires states to ensure access to "safe drinking water and sanitation services for present and future generations."[157] The court further noted that resolutions adopted by the OAS General Assembly "invite" states to do the same.[158] The court also highlighted that, similarly, the right to take part in cultural life was for the benefit of both present and future generations.[159] This case made headlines for being the first time that the IACtHR recognized the right to a healthy environment in a contentious case.[160] However, its recognition of future generations as beneficiaries of those rights is equally of interest. Thus, although intergenerational equity was not as central to its holding as it was in *PEDF*, the IACtHR found future generations to be important rights holders of multiple human rights.

IV. PARSING THROUGH THE FORESTS AND THE TREES

On the surface, *PEDF* and *Lhaka Honhat* seem like very different cases, and in many ways they are. One case applies private trust law to determine that future generations are beneficiaries of a public trust. Meanwhile, another case simply states that a general human right to a healthy environment exists and is meant to benefit future generations along with present generations. However, they both concern the same general topic. So how different are they, really? Which way is better? Is either way better? This Comment will now examine these questions and attempt to come to some answers.

A. Similarities and Differences Between the Two Approaches

Firstly, it must be noted that both approaches to intergenerational equity have similarities. Both jurisdictions impose affirmative duties on states to protect against harm and against likely harm. Additionally, both jurisdictions instruct that those duties can be enforced against both public and private entities. Furthermore, each jurisdiction took its time to delineate the rights of future generations to a healthy environment, exemplifying that progress very rarely occurs along a straight path.

157. *Id.*

158. *Id.* ("The second, in its first article resolves 'to invite' States 'to continue working to ensure access to safe drinking water and sanitation services for present and future generations.'").

159. *Id.* ¶ 238.

160. *See* Maria Antonia Tigre, *Inter-American Court Recognizes the Right to a Healthy Environment of Indigenous Peoples in First Contentious Case*, IUCN (May 4, 2020), https://www.iucn.org/news/world-commission-environmental-law/202005/inter-american-court-recognizes-right-a-healthy-environment-indigenous-peoples-first-contentious-case.

However, as alluded to in the introduction of this section, each case derives the rights of future generations from very different angles. In *PEDF*, the Pennsylvania Supreme Court asserts that future generations are beneficiaries of a healthy environment with enforceable rights to said environment, whereas the rights of future generations in the Inter-American system are implied. As noted earlier, the IACtHR refers to future generations numerous times throughout several cases. However, such references seem more like justifications for why a certain right is important rather than articulations of actual rights holders.

For instance, in *Lhaka Honhat*, the IACtHR held that the right to food implies that adequate food be available for both present and future generations. Likewise, it also held that the right to take part in cultural life was for the benefit of both present and future generations. However, the IACtHR stopped short of specifically calling future generations rights holders. Compare this with the Pennsylvania Supreme Court, which referred to future generations as "simultaneous beneficiaries" that are "entitled to equal access and distribution of public resources." Though the language is similar, the main difference is that the Pennsylvania Court addresses future generations as those with specific entitlements to the corpus of a trust, whereas the IACtHR grants no such specificity. The result is that the Pennsylvania Court presents a clear way for future generations to have standing in court, whereas the IACtHR does not. With those differences in mind, now seems like a good place to discuss what each approach means for the potential future of intergenerational jurisprudence.

B. What Next?: The Future of Future Generations

In her article, "The Greening of the Inter-American Court of Human Rights: Environmental Protection Possibilities for Future Generations," Luisa Cortat Simonetti Gonçalves identifies two main problems with the IACtHR's approach to future generations: jurisdiction[161] and active legitimation.[162] The first problem refers to the IACtHR's ability to adjudicate the rights of those who do not yet exist. As Gonçalves points out, although the IACtHR has case law instructing it on how to deal with transboundary harm,[163] it does not have the same instructions for "trans-

161. Gonçalves, *supra* note 91, at 299.

162. *Id.* at 300.

163. *See* The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in Relation to Articles 1(1) and 2 of

chronological harm."[164] Regarding the second concern, Gonçalves identifies two subissues: (1) the representation of victims (who are absent in this case because they are not born yet); and (2) the procedure of the Inter-American system, wherein victims access the court through the action of the Commission.[165] However, Gonçalves believes that all three problems are solved due to the fact that the IACtHR found a right to a healthy environment.[166]

In Gonçalves's view, the jurisdictional issue is solved because the IACtHR established in its advisory opinion that jurisdiction is a matter of control over a harmful activity and not a matter of "national jurisdiction over a territory."[167] The logic is that, because territoriality does not play a role in transboundary harm, time constraints should similarly play no role in determining whether the IACtHR has control over issues of future generations.[168] Gonçalves then points out that the representation issue is easily sidestepped because the IACtHR already has procedures for the representation of absent victims.[169] In situations where a victim is deceased, a complaint can still be presented by someone with a "private or personal connection" to the victim.[170] Gonçalves posits that the same sort of procedural representation can also apply to future generations.[171] Finally, in Gonçalves's estimation, if all else fails, plaintiffs can point to the precautionary principle, as outlined in the Rio Principle, which states that even when harm is uncertain, states still have a duty to protect environmental rights.[172] Thus, even though the Inter-American system's estimation of future generations as rights holders is harder to parse, there is still a way to argue for their rights.

Even still, is this the best way to approach the rights of future generations? Well, that question is complicated.

Though the Inter-American system's view of future generations is potentially more expansive, it also comes with far too many legal uncertainties as it currently stands. On the other hand, Pennsylvania's

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the American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. Hum. Rts. (ser. A) No. 23, ¶¶ 95-103 (Nov. 15, 2017).

164. Gonçalves, *supra* note 91, at 300.

165. *Id.*

166. *Id.* at 307.

167. *Id.* at 307-08.

168. *Id.* at 308.

169. *Id.*

170. *Id.* at 301.

171. *Id.*

172. *Id.* at 306.

ERA presents a much more concrete enumeration of rights. There, the Pennsylvania Supreme Court applied trust principles which impose affirmative duties on trustees which, in the case of the ERA, is Pennsylvania.[173] As a trustee, Pennsylvania has a duty to manage and use public property only for the benefit of the public.[174] As simultaneous beneficiaries of that trust, future generations have a current interest in environmental protection.[175] As such, the state is instructed to not value present consumption over preservation for future generations.[176] Thus, the right to a healthy environment is not only in place for the eventual benefit of future generations, it is in place because future generations are *currently* rights holders to a healthy environment. The difference between the IACtHR's approach and this is akin to saying, for instance, that Christians have the right to freedom of religion for the benefit of both Christians and atheists, as opposed to saying that Christians and atheists both have an enforceable right to freedom of religion. Pennsylvania's intergenerational doctrine is simply more concrete and more enforceable than that of the IACtHR.

However, as stated before, the Inter-American system's doctrine is potentially more expansive than Pennsylvania's. This is because the IACtHR recognized a general human right to a healthy environment. In contrast, though Pennsylvania's public trust is clearer, it is also more vulnerable. Though enshrined in the Pennsylvania constitution, the ERA can still be repealed. If that takes place, the public trust would be eliminated, and neither present nor future Pennsylvanians would retain the right to environmental preservation. Furthermore, the public trust only applies to the Commonwealth of Pennsylvania; it has no bearing on the federal government. Thus, Pennsylvanians would likely have a more difficult time enforcing their rights against any federal action. In the Inter-American system, the right to a healthy environment is an enforceable human right. Such a right is much more difficult to overcome by either political or judicial means, especially considering the amount of sovereign member states that recognize the IACtHR's jurisdiction. And as discussed above, future generations could very well become rights holders in and of themselves with the right legal strategy. On the other

173. Kenneth T. Kristl, *The Devil is in the Details: Articulating Practical Principles for Implementing the Duties in Pennsylvania's Environmental Rights Amendment*, 28 GEO. ENV'T L. REV. 589, 603-04 (2016).

174. Broughton, *supra* note 28, at 2272-73.

175. Pa. Env't Def. Found. v. Commonwealth, 255 A.3d 289, 310 (Pa. 2021).

176. *Id.*

hand, it must be noted that member states can leave the Inter-American system, potentially leaving all citizens of a given nation without legal recourse to enforce the right to a healthy environment. Just since 1998, both Trinidad and Tobago and Venezuela denounced the American Convention on Human Rights.[177] It is not outside the realm of possibility that more states leave the Inter-American system due to the newly imposed obligations associated with the right to a healthy environment.[178]

Thus, each system's approach to intergenerational equity has its own strengths and vulnerabilities. Maybe the ideal recognition of rights of future generations does not exist in either approach, but in a combination of both approaches. Such a recognition would create a fundamental right to a healthy environment that exists currently in both present and future generations and creates affirmative obligations for states to protect those rights. Alas, humanity will have to wait for such developments to occur in future litigation, if the jurisprudence is developed at all.

V. CONCLUSION

Deriving rights for future generations to hold is always a little confusing. Normally rights are held in things that currently exist (or that have already existed) such as people, animals, or corporations. Future generations, on the other hand, do not exist nor have they ever existed. There is not even a guarantee that they ever will exist. However, it is vitally important that current governments respect the rights of future generations. As the Pennsylvania Supreme Court pointed out, respecting the rights of future generations keeps governments from being shortsighted with their environmental policies.[179] And as climate change continues to worsen,[180] governments can no longer afford to be shortsighted. Future generations are not just in danger of having their rights infringed upon, they are in danger of never existing. Unless humanity wants that to become a reality, future generations' rights to a healthy environment need to be respected and enforced now. Otherwise,

177. History, Inter-American Court of Human Rights, https://www.corteidh.or.cr/historia.cfm?lang=en#:~:text=To%20this%20date%2C%20twenty%2%200five,Peru%2C%20Dominican%20Republic%2C%20Suriname%2C (last visited Apr. 9, 2024).

178. *See* Gonçalves, *supra* note 91, at 303.

179. Robinson Twp. v. Commonwealth, 623 Pa. 564, 686 (Pa. 2013).

180. Marcus Kauffman, *IPCC Report: 'Code Red' for Human-Driven Global Heating, Warns UN Chief*, UN NEWS (Aug. 9, 2021), https://news.un.org/en/story/2021/08/1097362 ("The IPCC expert warns that in the coming decades, climate changes will increase in all regions.").

in the words of Rep. Kury, "the other great world problems we face may well become moot."[181]

181. H.R. JOURNAL, *supra* note 15, at 486, *reprinted in* Dernbach & Sonnenberg, *supra* note 12, at 190.