



**Deutsches Institut
für Menschenrechte**

Position Paper

International recognition of a human right to a clean, healthy and sustainable environment

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1 Introduction

The call for an internationally recognised human right to a clean, healthy and sustainable environment (hereafter: “right to a healthy environment”) has been heard. At its 48th session on 8 October 2021, the United Nations Human Rights Council adopted a resolution that recognises the right to a healthy environment as a universal human right.¹ The Council had already adopted resolution 45/30² on the rights of the child and a healthy environment in October 2020. This underlines the need for a healthy environment to safeguard the rights of the child, and calls on states to consider recognising a right to a healthy environment in their national legislation.³

The UN Special Rapporteur on human rights and the environment, the UN Committee on the Rights of the Child, the UN Environment Programme and the Office of the United Nations High Commissioner for Human Rights have long advocated international recognition of the right to a healthy environment. In September 2020, a broad alliance of civil society organisations from the environmental and human rights sectors launched a global campaign calling for recognition of a human right to a healthy environment.⁴ Slovenia, Switzerland, Costa Rica, Morocco and the Maldives are long-standing, prominent supporters and it was they who tabled the resolution on recognition so that it could be voted on by the UN Human Rights Council. Germany supports the recognition of the right to a healthy environment on the basis of existing human rights provisions.⁵

Advocates are planning to have the right to a healthy environment recognised as a human right soon by a resolution of the UN General Assembly, as happened when the human right to water and sanitation was recognised in 2010 by the UN General Assembly resolution 64/292. In the following the current status of the establishment of the right to a healthy environment, as well as arguments for and against its establishment by resolution are examined.

¹ A/HRC/RES/48/13 (43 states voted in favour of adopting the resolution, four states abstained: China, India, Russia, Japan).

² UN Doc A/HRC/RES/45/30.

³ *ibid.*, p. 5 (4c).

All internet references were most recently accessed and checked on 09.09.2021.

⁴ <http://healthyenvironmentisaright.org/>

⁵ German Bundestag (19.04.2021), response by the Federal Government to the minor interpellation brought by Members of Parliament Lisa Badum, Jürgen Trittin, Magarete Bause, other Members of Parliament and the Bündnis 90/DIE GRÜNEN parliamentary group – Parliamentary Paper 19/27537 – on the Federal Government’s external climate policy, Parliamentary Paper 19/28639, p. 7 (question 6), <https://dip21.bundestag.de/dip21/btd/19/286/1928639.pdf>

2 The right to a healthy environment: state of play

None of the nine UN core human rights treaties explicitly mentions the right to a healthy environment. Existing references to environmental issues in human rights have been made by UN Treaty Bodies and UN Special Rapporteurs. They state that the following human rights in particular have an environmental dimension:⁶

- Right to life (Art. 6 Par. 1 International Covenant on Civil and Political Rights, Art. 6 Par. 1 Convention on the Rights of the Child);
- Every person's right to the highest attainable standard of physical and mental health: a healthy environment and protection from harmful substances in the environment and at the workplace is an integral part of the right to health, Art. 12 International Covenant on Economic, Social and Cultural Rights, Art. 5 Convention on the Elimination of All Forms of Racial Discrimination, Art. 12 Convention on the Elimination of All Forms of Discrimination against Women, Art. 24 Convention on the Rights of the Child;
- Right to an adequate standard of living (Art. 11 International Covenant on Economic, Social and Cultural Rights, Art. 14 Convention on the Elimination of All Forms of Discrimination against Women, Art. 27 Convention on the Rights of the Child).

The Committee on the Rights of the Child is the UN Treaty Body that makes the most recommendations to states on human rights obligations related to the environment. This is above all because children, whose physical development is not yet complete, will be exposed to harmful environmental conditions for far longer and much more severely than adults. The Committee is currently drafting its General Comment No. 26 on children's rights and the environment, with a particular emphasis on climate change.

In 2018, in fulfilment of a mandate from the UN Human Rights Council, the UN Special Rapporteur on human rights and the environment set out state obligations arising from existing human rights safeguards in relation to environmental issues in the so-called '16 Framework Principles',⁷ including:

- **procedural obligations:** to perform environmental impact assessments; to make environmentally relevant information accessible; to enable the population to participate in decision-making, provide legal redress;
- **substantive obligations:** to protect the population from the human rights impacts of environmental pollution, including by third parties; to take additional precautions for those groups most at risk from or especially vulnerable to environmental harm; international cooperation among states to prevent, reduce and repair cross-border and global environmental damage that impairs the full enjoyment of human rights.

⁶ Further references are discussed in detail by Knox, John H. / Pejan, Ramin (2018): Introduction to the Human Right to A Healthy Environment. In: Knox, John H. (ed.) (2018): The Human Right to a Healthy Environment. Cambridge: Cambridge UP; Rodríguez-Garavito, César (2018): A Human Right to a Healthy Environment? Moral, Legal and Empirical Considerations. In: Knox, John H. (ed.) (2018): The Human Right to a Healthy Environment. Cambridge: Cambridge UP, p. 154–162.

⁷ UN Doc A/HRC/37/59.

The Framework Principles do not formulate new state obligations; they articulate those obligations that arise from existing human rights treaties and their interpretation by UN Treaty Bodies, by regional human rights bodies and by state practice.

At the regional level, three of the four regional human rights treaties already include the right to a healthy environment: the African Charter on Human and Peoples' Rights (Art. 24), the San Salvador Additional Protocol (Art. 11) to the American Convention on Human Rights (AMRC) and the Arab Charter on Human Rights (Art. 38). In a pivotal Advisory Opinion in 2018, the Inter-American Court of Human Rights affirmed that upholding human rights depends on a healthy environment. This was the first time the Court had confirmed a right to a healthy environment under the AMRC, and the state's obligation to take action against significant environmental damage to individuals inside and outside its territory.⁸ Although the European Convention on Human Rights (ECHR), which is the oldest regional human rights instrument, does not explicitly mention a right to a healthy environment, the European Court of Human Rights has built up extensive case law in the field. Claims have already been recognised in a series of court decisions pertaining to cases in which environmental pollution and degradation has led directly to the violation of human rights such as the right to life and health.⁹ The adaptation of existing human rights instruments to address environmental concerns is currently being discussed within the Council of Europe; for example, through the creation of an additional protocol to the ECHR on the right to a healthy environment.¹⁰ State obligations on access to information and on the rights to participation and access to justice in environmental affairs are also enshrined in the Aarhus Convention (1998) for Europe¹¹ and in the Escazú Agreement (2018) for Latin America and the Caribbean.¹²

According to the UN Special Rapporteur on human rights and the environment, a total of more than 80 percent of UN member states (156 of 193, as of June 2021¹³) recognise the right to a healthy environment in their regional or national/constitutional legal frameworks. These normative frameworks vary greatly, however. At the national level, they range from direct constitutional enshrinement of the right, to recognition of the right as inherent to the constitutional right to life, to extensive case law based on the right to a healthy environment.¹⁴ Protection of the environment through national programmes and legislation, and judgments passed by regional and national courts in environmental matters, is correspondingly diverse.

⁸ Inter-American Court of Human Rights (2018): OPINIÓN CONSULTIVA OC-23/17; American Society of International Law (2018): Inter-American Court of Human Rights' Advisory Opinion on the Environment and Human Rights, <https://www.asil.org/insights/volume/22/issue/6/inter-american-court-human-rights-advisory-opinion-environment-and-human>

⁹ European Court of Human Rights (March 2019): Factsheet – Environment and the European Court of Human Rights, https://www.echr.coe.int/Documents/FS_Environment_ENG.pdf

¹⁰ <https://www.coe.int/en/web/portal/-/environment-and-human-rights-towards-a-right-to-a-healthy-environment->

¹¹ <https://ec.europa.eu/environment/aarhus/>

¹² <https://treaties.un.org/doc/Treaties/2018/03/20180312%2003-04%20PM/CTC-XXVII-18.pdf>

¹³ Joint Statement by UN human rights experts for World Environment Day (5 June 2021): Recognition of the right to a healthy environment is key to address the environmental crisis and protect human rights, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27130&LangID=E>

¹⁴ Boyd, David / Knox, John / Limon, Marc (2021): #THE TIME IS NOW – The case for universal recognition of the right to a safe, clean, healthy and sustainable environment, Universal Rights Group, p. 27, https://www.universal-rights.org/wp-content/uploads/2021/02/2021_URG_R2HE_TIME_REPORT_MM.pdf

The protection of the natural foundations of life and animals has been enshrined as a state objective of the German State since 1994 by Article 20a of its Basic Law (Grundgesetz, GG). One particular outcome of Article 20a of the Basic Law is that the protection of the natural foundation of life and animals must be included in state decisions. As a state objective, Article 20a of the Basic Law is aimed primarily at the legislature.¹⁵ However, Article 20a of the Basic Law does not entail a subjective fundamental right, as the Federal Constitutional Court most recently confirmed in its ‘Climate Decision’ of 24 March 2021.¹⁶ At a legislative level, the inclusion of environmental concerns required by Article 20a of the Basic Law has been done by enacting environmental regulations. For instance, an environmental impact assessment is legally required for certain undertakings, such as infrastructure projects.

3 Arguments in favour of a UN resolution on the right to a healthy environment

In view of the global environmental crisis that has been brought about by pollution, climate change, biodiversity loss and overexploitation of natural resources, supporters¹⁷ consider recognition of the right to a healthy environment to be essential for the protection of human life and dignity. They advance the following arguments in favour of international recognition of the right to a healthy environment through a resolution of the UN Human Rights Council and then the UN General Assembly:

Continue to promote legal recognition by states and speed up implementation:

By passing a resolution of recognition, states would undertake to protect, observe and fulfil the right to a healthy environment. It would reinforce the state practice of the 80 percent of UN member states that already recognise this right in their constitutions, national legislation and regional agreements; and it would steer the state practice of the remaining 20 percent that do not yet recognise this right towards recognition of the right. All in all, a resolution would encourage all of the states to prioritise and accelerate activities to implement this right and mobilise the necessary resources.

Strengthen accountability: Recognising the right to a healthy environment through a UN resolution would strengthen states’ accountability on environmental matters through UN human rights bodies (above all through the Universal Periodic Review (UPR) process of the UN Human Rights Council and the state reporting procedures of UN Treaty Bodies, such as the Committee on the Rights of the Child on the basis of its General Comment No. 26, which the Committee is developing on children’s rights and the environment). This could also feed back to the various reporting mechanisms and produce a higher degree of coherence and systematisation.

¹⁵ Dreier, Horst (2015): Grundgesetz – Kommentar, 3rd edition, Art. 20a recital 47, 67. See also Germany’s response to the questionnaire by the UN Special Rapporteur on human rights and the environment on safe ecosystems and human rights, May 2020, <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/Call/States/GERMANYINPUTS.pdf>.

¹⁶ Federal Constitutional Court (2021): Decision of 24.03.2021, 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20, recital 112.

¹⁷ See, inter alia, Boyd and others (2021), and note 14, and Rodríguez-Rivera, Luis E. (2020): The Right to Environment – A New Internationally Recognized Human Right, In: The Cambridge Handbook of New Human Rights, editors: Andreas von Arnould, Kerstin van der Decken, Mart Susi, Cambridge: Cambridge UP.

Adapt the protective dimension of human rights to today's circumstances: The global community now has a better understanding of how and to what extent environmental impacts limit the enjoyment of human rights; existing human rights guarantees do not provide explicit or adequate protection in this regard. The right to a healthy environment therefore integrates and reinforces the application of other human rights to the protection of the environment: it aims to ensure comprehensive protection against environmental damage and equal access to all of those basic needs that depend on a healthy biosphere.

4 Discussion

Despite the supportive arguments for a resolution on the right to a healthy environment, some reservations remain.¹⁸ This is essentially based on the assumption that further international recognition is unnecessary; reservations build on the following points, among others:

The right to a healthy environment is already covered by existing human rights treaties and their interpretations. Human rights references to environmental issues have been articulated in recent years by UN Treaty Bodies and UN Special Rapporteurs; the Treaty Bodies have also been making relevant recommendations to states for years. The '16 Framework Principles' represent a normative corpus derived from existing human rights obligations that states can align their practice with.

The majority of states already recognises the right to a healthy environment. Eighty percent of UN member states have already enshrined the right to a healthy environment in their constitutions or national legislation, or recognise it through regional treaties. In the case of the right to water, with which this case is often compared, the initial situation before a resolution was passed was much worse.¹⁹ A resolution might increase the number of states that recognise the right to a healthy environment, but critics argue that environmental matters are already regulated worldwide by international environmental treaties as well as national legislation, administrative regulations and programmes. Recognition by resolution would therefore not add any value at this time, especially since it would define neither the scope and actual content of the right, nor, consequently, the elements forming an infringement of this right.

Human rights relating to environmental concerns need improved enforcement mechanisms, and these are not the focus of a UN resolution. The aforementioned human rights, such as the right to health and healthy working and environmental conditions, and the right to housing – to name but two – are violated everywhere and are not guaranteed in much of the world. A resolution should also be judged in terms of how it can help to improve enforcement from the point of view of rights holders, and whether strengthening existing mechanisms (by means of an inter-treaty body General Comment, for instance) is not a better approach.

¹⁸ See, inter alia, Handl, Günther (2020): The Human Right to a Clean Environment and Rights of Nature. In: The Cambridge Handbook of New Human Rights, editors: Andreas von Arnould, Kerstin van der Decken, Mart Susi, Cambridge: Cambridge UP, p. 137–153

¹⁹ Verbal communication, Lê Phan-Warneke, LLM.

5 Outlook

The UN Human Rights Council resolution recognising the right to a healthy environment is an opportunity to promote international understanding of environment-related human rights.

Any action by the international community on the basis of the resolution must be judged by the extent to which it improves the situation of rights holders. States should also strengthen international cooperation on environmental issues. When recognising the right to a healthy environment as a fundamental human right, states should also ensure that this has a national impact and that they engage all relevant national stakeholders, including civil society and National Human Rights Institutions, in developing related programmes and legislation.

Imprint

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German Institute for Human Rights

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