

The right to a healthy, clean and sustainable environment

Ladjal Mouna¹

¹University of M'sila (Algeria).

The E-mail Author: mouna.ladjal@univ-msila.dz

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Abstract:

All people have the right to a clean, healthy and sustainable environment. As human rights and the environment are interdependent, a clean, healthy and sustainable environment is necessary for the full enjoyment of a wide range of human rights, such as the rights to life, health, food, water and sanitation and development, among others.

Keywords: General assembly, clean environment, sustainable development, human rights.

Introduction:

A healthy environment is essential to ensure respect for human dignity, equality and freedom. Today, it is widely accepted that environmental protection is a prerequisite for the implementation of human rights.

Despite a multitude of international agreements, laws and national policies, the state of our environment continues to deteriorate. The global crises we are currently facing, including climate change, biodiversity loss and pollution, represent some of the greatest threats to humanity, seriously affecting the exercise and enjoyment of human rights.

The right to a healthy, clean and sustainable environment was universally recognized by resolution 48/13 adopted by the Human Rights Council on 8 October 2021 Affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law, was universally recognized by resolution 76/300 of the United Nations General Assembly in 2022.

This affirmation is the result of normative interactions between domestic and international law, as well as between international human rights law and international environmental law.

1- Definition the right to a clean, healthy and sustainable environment

All people have the right to a clean, healthy and sustainable environment. As human rights and the environment are interdependent, a clean, healthy and sustainable environment is necessary for the full enjoyment of a wide range of human rights, such as the rights to life, health, food, water and sanitation and development, among others.

At the same time, the enjoyment of all human rights, including the rights to information, participation and access to justice, is of great importance to the protection of the environment.¹

Despite myriad international agreements, as well as national laws and policies, the condition of our environment keeps deteriorating. The global crises we currently face, including climate change, the loss of biodiversity, and pollution, represent some of the biggest threats to humanity, severely affecting the exercise and enjoyment of human rights. Some examples include:

- Rising global temperatures are increasing water shortages and land degradation, including soil erosion, vegetation loss, wildfires, and permafrost, affecting people's rights to life, health, food, water and adequate standard of living, among other rights.
- Air pollution is considered one of the biggest environmental threats to health resulting in an estimated seven million premature deaths every year in violation of the rights to health and life.²
- Over 38 million people were newly displaced by climate-related disasters in 2021. This directly affects the enjoyment of the rights to adequate housing, education, health and security, among others.³

¹ - Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/73/188 (19 July, 2018). Available at : <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/231/04/PDF/N1823104.pdf?OpenElement>

² - World Health Organization New WHO Guidelines aim to save millions of lives from air pollution (22 September, 2021). Available at: <https://www.who.int/news/item/22-09-2021-new-who-global-air-quality-guidelines-aim-to-save-millions-of-lives-from-air-pollution>

³ - Internal Displacement Monitoring Centre (IDMC), Global Report on Internal Displacement 2022. Available at <https://www.internal-displacement.org/global-report/grid2022/#:~:text=There%20were%2059.1%20million%20internally,as%20a%20result%20of%20disasters.&text=Typhoon%20Rai%20triggered%20the%20largest%20number%20of%20disaster%20displacements%20in%202021>

• Environmental degradation disproportionately impacts persons, groups and peoples already in vulnerable situations. The impacts of the triple planetary crisis augment the structural and other intersecting barriers they face. Some examples of those who have often been and may continue to be disproportionately affected by the triple planetary crisis include:

- Women and girls, as environmental degradation reinforces pre-existing gender inequalities and discrimination on issues such as gender-based violence, and rights of access and tenure over land and natural resources.
- Children who, because of inter alia their less-developed physiology and immune systems, experience the effects of environmental degradation more intensely due to food and water shortages, and transmission of diseases.¹
- Indigenous Peoples who often face grave and even life-threatening risks for defending the traditional lands, resources and territories upon which their communities depend for survival, livelihoods and religious and customary practices.

2- Résolution 48/13

The resolution 48/13 adopted by the Human Rights Council on 8 October 2021 Affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law.

A- Content of resolution 48/13

Adopted by a recorded vote of 43 to 0, with 4 abstentions. The voting was as follows:

In favour: Argentina, Armenia, Austria, Bahamas, Bahrain, Bangladesh, Bolivia (Plurinational State of), Brazil, Bulgaria, Burkina Faso, Cameroon, Côte d'Ivoire, Cuba, Czechia, Denmark, Eritrea, Fiji, France, Gabon, Germany, Indonesia, Italy, Libya, Malawi, Marshall Islands, Mauritania, Mexico, Namibia, Nepal, Netherlands, Pakistan, Philippines, Poland, Republic of Korea, Senegal, Somalia, Sudan, Togo, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Uzbekistan and Venezuela (Bolivarian Republic of)

Abstaining: China, India, Japan and Russian Federation]

¹ - See concept note of the Committee on the Rights of the Child in relation to the decision to draft a General Comment on children and environment. Available at :
<https://www.ohchr.org/en/treaty-bodies/crc/concept-note-general-comment-childrens-rights-and-environment-special-focus-climate-change>

This resolution adopted by the Human Rights Council, on 8 October 2021.

The Content of resolution 48/13 is Guided by the purposes and principles of the Charter of the United Nations,

- 1-** Recognizes the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights;
- 2-** Notes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;
- 3-** Affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law;
- 4-** Encourages States:
 - a)** To build capacities for the efforts to protect the environment in order to fulfill their human rights obligations and commitments, and to enhance cooperation with other States, the Office of the United Nations High Commissioner for Human Rights, the rest of the United Nations system and other relevant international and regional organizations, agencies, convention secretariats and programmes, and relevant non-State stakeholders, including civil society, national human rights institutions and business, on the implementation of the right to a clean, healthy and sustainable environment, in accordance with their respective mandates;
 - b)** To continue to share good practices in fulfilling human rights obligations relating to the enjoyment of a clean, healthy and sustainable environment, including by exchanging knowledge and ideas, building synergies between the protection of human rights and the protection of the environment, bearing in mind an integrated and multisectoral approach and considering that efforts to protect the environment must fully respect other human rights obligations, including those related to gender equality;
 - c)** To adopt policies for the enjoyment of the right to a clean, healthy and sustainable environment as appropriate, including with respect to biodiversity and ecosystems;
 - d)** To continue to take into account human rights obligations and commitments relating to the enjoyment of a clean, healthy and sustainable environment in the implementation of and follow-up to the Sustainable Development Goals, bearing in mind the integrated and multisectoral nature of the latter;
- 5-** Invites the General Assembly to consider the matter;
- 6-** Decides to remain seized of the matter.

B- Importance and practical effects of Resolution 48/13

Even if Resolution 48/13 is not legally binding, its value should not be underestimated. Indeed, this Resolution confirms that the right to a safe, clean, healthy and sustainable environment should be universally protected and could support efforts to formally recognize the right to a healthy environment by the United Nations General Assembly, the Council of Europe and those states that do not yet explicitly provide for this right in their domestic legal systems (EJIL:Talk!, 2021).

Indeed, the formal recognition at the United Nations level of the right to a healthy environment as a universal human right now makes it crystal clear that all states have an obligation to protect, respect and fulfill this right (OHCHR, 2021). This will strengthen the support for states at the national level to improve their performance on environmental issues, including those that have not yet done so to formally recognize the right to a healthy environment in their national legislation (OHCHR, 2021). It will also provide a much-needed impetus for continued action based on global rights in the face of the environmental and climate crisis (Global Alliance of National Human Rights Institutions (GANHRI, 2021).

Moreover, the scope of Resolution 48/13 is even broader as it provides an additional tool to challenge state and corporate actors for failing to take timely and appropriate action to address the triple environmental crisis of climate change, pollution, and loss of nature (OHCHR, 2021). In addition, given that national court decisions are often based on the right to a healthy environment, even in countries where the right is not explicitly recognized in domestic law, this Resolution may also encourage progressive judges in adjudicating environmental disputes around the world (EJIL:Talk!, 2021).

In fact, this Resolution is especially important for all environmental human rights defenders who work, often at great personal risk, to safeguard the land, air, water, and ecosystems on which we all depend (Devex, 2021). It is also vital for the people and communities who suffer disproportionate impacts of environmental degradation, including women, children, indigenous people, and other potentially vulnerable and marginalized populations (Devex, 2021). Therefore, after this Resolution, governments are urged to include the right to a safe, clean, healthy, and sustainable environment in their constitutions and legislation (OHCHR, 2021).

3- Definition and importance of resolution 76/300

What is the significance of resolution 76/300 on the right to a clean, healthy and sustainable environment?

In a landmark resolution in October 2021, the United Nations Human Rights Council recognized the right to a safe, clean, healthy and sustainable environment as a human right. The 161 member states of the United Nations General Assembly also recognized this right at its 76th session in July 2022, a consensus that points to measures to promote environmental justice, control the climate crisis, protect nature and limit pollution.¹

On July 22, 2022, during its 76th regular session, the General Assembly adopted resolution 76/300, recognizing the right to a clean, healthy and sustainable environment as a fundamental human right.²

First of all, resolution 76/300 has considerable symbolic importance. The General Assembly of the United Nations is competent at international level to recognize the universal nature of a new human right. Universal human rights are rights deemed so important that every person, without distinction and everywhere in the world, is entitled to them simply because he or she is a human being.

The recognition of new universal human rights is not something to be done lightly; only the most fundamental interests can be taken into account.

At the time of drafting the Universal Declaration of Human Rights, which remains the most important catalog of universal human rights, little was known about the importance of a healthy environment for human beings. This is why the right to a healthy environment was not included in the 1948 Universal Declaration³

¹ -On October 8, 2021, the United Nations Human Rights Council (UNHRC) adopted resolution HRC/RES/48/13, entitled The human right to a clean, healthy and sustainable environment, which states that the enjoyment of the right to a clean, healthy and sustainable environment is an important element of the enjoyment of human rights.

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Resolution 48/13 was adopted at the 48th session of the UNHRC, marking the first time this body recognized a human right in a resolution^{6,7}. The draft resolution was presented by the core group made up of Costa Rica (drafter), Morocco, Slovenia, Switzerland and the Maldives⁸. The vote was adopted with 43 votes in favor, 0 against and 4 abstentions (China, India, Japan and the Russian Federation).

Karl S. Coplan, *Climate Change Law: An Introduction*, Cheltenham, United Kingdom, Edward Elgar Publishing, 2021, 162 p. (ISBN 978-1839101298)

² - India backs UN resolution to recognize human right to clean, healthy environment; raises concern over text », *The Times of India*, 29 juillet 2022 (ISSN 0971-8257)

³ - Federal Institute for the Protection and Promotion of Human Rights, The right to a clean, healthy and sustainable environment as a human right, article published on the <https://institutfederaaldroitshumains.be/fr/le-droit-a-un-environnement-propre-sain-et-durable-en-tant-que-droit-humain> website, Tuesday 22/08/2023.

From the 1970s onwards, environmental issues became increasingly important on the international agenda. In 1972, the Stockholm Declaration, adopted at the United Nations Conference on the Human Environment, established for the first time an explicit link between human rights and the protection of a healthy environment. In the wake of this, the right to a healthy environment was enshrined in the constitutions of a growing number of countries.

Resolution 76/300 also considers that access to a clean, healthy and sustainable environment is an integral part of international law, and that its promotion requires the strict implementation of multilateral agreements and States' obligations under international humanitarian law. It encourages all States, international organizations, companies and all interested parties to strengthen their efforts to guarantee this right, in particular by improving international cooperation¹.

Resolution 76/300 therefore has great symbolic importance, but does it also have legal significance?

General Assembly resolution 76/300 is a legally non-binding document. This means, for example, that you can't invoke it in court. To change this, a treaty protecting this right would also have to be adopted at UN level.

Although the resolution is not legally binding, it has been welcomed by the UN High Commissioner for Human Rights, Michelle Bachelet, various special rapporteurs and civil society organizations. Secretary-General António Guterres hailed the adoption of the resolution as a "historic step", but said it was "only the beginning".²

The United Nations could, for example, adopt a specific treaty on the right to a healthy environment, or add a protocol to an existing human rights treaty, such as the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights.

Voices are also being raised at European level calling for the inclusion of a right to a healthy environment in the European Convention on Human Rights, even if this is not for tomorrow.

¹ - Joel E. Correia, « The UN declared a universal human right to a healthy, sustainable environment – here's where resolutions like this can lead.

² - Mays Ibrahim Mustafa, « Experts hail UNGA resolution, recognising right to healthy, clean, sustainable environment sur Jordan Times, 31 juillet 2022

In addition, the European Convention on Human Rights is playing an increasingly important role. The European Court of Human Rights in Strasbourg has recognized that the right to privacy (Article 8 of the European Convention on Human Rights) is violated when environmental pollution has such a negative impact that it may reduce the quality of life or well-being of the people concerned. When environmental pollution is so serious as to endanger human life, the right to life (article 2 of the European Convention on Human Rights) also applies. These rights require the government to take reasonable steps to avoid exposing individuals to such negative environmental impacts.

Content of résolution 76/300

On July 28, 2022, the United Nations General Assembly adopted a resolution recognizing the right of human beings to a clean, healthy and sustainable environment, with 161 votes in favor, 0 against and 8 abstentions. The universal recognition of a human right by the UN General Assembly, which brings together all 193 member states, is an event of historic significance. The right to drinking water and sanitation was the last human right to be recognized by the UN General Assembly, in 2010.

By adopting the new resolution, the international community has reaffirmed the interdependence and interaction between human rights and a clean, healthy and sustainable environment. The resolution is not legally binding, but it is expected to bring about positive changes, such as stronger political commitment to the environment, greater accountability of states and greater policy coherence on environment and human rights.

Although not legally binding, the resolution commits States to taking various measures to ensure respect for the right to a healthy environment, such as :¹

- Strengthen environmental protection capabilities and increase cooperation with other States, the United Nations system,
- organizations and agencies;
- Integrate information on human rights and the environment into the school system;
- Promote and intensify environmental action based on human rights;

¹ - Les Nations unies adoptent une résolution sur la mise en œuvre du droit à un environnement sain, article publié sur site :

<https://www.actu-environnement.com/ae/news/conseil-droits-de-homme-nations-unies-resolution-droit-environnement-sain-41544.php4>

- Facilitate the exchange of knowledge;
- Enhance the capacity of the judicial sector to understand the relationship between man and the environment;
- Encourage the emergence of a responsible private sector, etc.

"This resolution paves the way for effective protection and promotion of the right to a healthy environment, and provides us with the necessary next steps, now that this right is universally recognized."

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations,¹

Reaffirming further its resolution 70/1 of 25 September 2015, entitled "Transforming our world: the 2030 Agenda for Sustainable Development", in which it adopted a comprehensive, far-reaching and people-centred set of universal and transformative Sustainable Development Goals and targets, its commitment to working tirelessly for the full implementation of the Agenda by 2030 ensuring that no one is left behind, its recognition that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development, and its commitment to achieving sustainable development in its three dimensions – economic, social and environmental – in a balanced and integrated manner,

Recalling States' obligations and commitments under multilateral environmental instruments and agreements, including on climate change, and the outcome of the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, in June 2012, and its outcome document entitled "The future we want", which reaffirmed the principles of the Rio Declaration on Environment and Development, Recalling also Human Rights Council resolution 48/13 of 8 October 2021, entitled "The human right to a clean, healthy and sustainable environment",

Recalling further all Human Rights Council resolutions on human rights and the environment, including resolutions 44/7 of 16 July 2020, 45/17 of 6 October 2020,

¹ - General Assembly A/RES/76/300, Resolution adopted by the General Assembly on 28 July 2022, Seventy-sixth session Agenda item 74 (b) Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

45/30 of 7 October 2020 and 46/7 of 23 March 2021, and relevant resolutions of the General Assembly,

Noting also that a vast majority of States have recognized some form of the right to a clean, healthy and sustainable environment through international agreements, their national constitutions, legislation, laws or policies,

- 1-** Recognizes the right to a clean, healthy and sustainable environment as a human right;
- 2-** Notes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;
- 3-** Affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law;
- 4-** Calls upon States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.

Conclusion

The right to a clean, healthy and sustainable environment is also linked to other existing rights and parts of international human rights law. This makes sense. As human beings are indivisible, human rights are also seen as interrelated, interdependent and mutually reinforcing. Achieving a clean, healthy and sustainable environment requires sustained efforts to maintain working environments free from accidents, injuries and disease; to apply a "just transition" logic that avoids trade-offs between the human right to work and the human right to a healthy environment; and to protect biodiversity by supporting the livelihoods of indigenous peoples.

Resources and books

- Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/73/188 (19 July, 2018). Available at :
<https://documents-dds.y.un.org/doc/UNDOC/GEN/N18/231/04/PDF/N1823104.pdf?OpenElement>
- World Health Organization New WHO Guidelines aim to save millions of lives from air pollution (22 September, 2021). Available at:
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- See concept note of the Committee on the Rights of the Child in relation to the decision to draft a General Comment on children and environment. Available at :
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- Les Nations unies adoptent une résolution sur la mise en œuvre du droit à un environnement sain, article publié sur site :
- <https://www.actu-environnement.com/ae/news/conseil-droits-de-homme-nations-unies-resolution-droit-environnement-sain-41544.php4>
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