

How far can it be argued that the right to a clean, healthy, and sustainable environment is a fundamental human right?

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This article was originally submitted last year as part of ERL3001 and is being reproduced with the author's permission. In it, **Maila Cimino** discusses what steps are being taken on an international level in order to safeguard this fundamental human right.

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1. The Environment and Human Rights

Human activity which is unsustainable is jeopardising the fundamentals of life across the globe, leading to the environment being under threat. Such threats are a result of various issues, akin to climate change caused by greenhouse gas emissions, as well as a substantial mitigation in biodiversity, whereby a large number of animal and plant species face extinction.¹ On a broader historical spectrum, the consideration of the environment across the prism of human rights legislation is relatively recent. There are several significant human rights instruments which one may fall back on today, such as the 1948 Universal Declaration of Human Rights, the 1950 European Convention on Human Rights, the 1961 European Social Charter, the 1966 International Covenant on Civil and Political Rights, and the 1966 International Covenant on Economic, Social and Cultural Rights; all of which were a result of the atrocities and genocide of the Second World War. Subsequently, as the world began to recover from the devastation caused by the war, issues and concerns regarding the environment seemed to fade into the background. Following the adoption of a number of United Nations protection instruments, akin to the 1972 Stockholm Declaration, the 1992 Framework Convention on Climate Change, and the 2016 Paris Agreement, such gap was gradually filled. Nevertheless, this leads to the question whether any action has recently been taken in order to address not merely the climate change crisis, but also the rise in environmental degradation.

2. The Right to a Clean, Healthy, and Sustainable Environment

Climate change has a wide range of effects on human health and well-being. It jeopardises the key components for decent well-being, such as access to clean drinking water, clean air, access to adequate shelter, a healthy food supply, and other factors, wherein such has the ability to undo decades of global health advances. Indeed, the World Health Organisation² estimates that climate change will cause roughly 250,000 more fatalities per year between the years 2030 and 2050, primarily due to diseases akin to malaria and diarrhoea, as well as starvation and heat stress. It is interesting to note that environmental issues were placed under the limelight of international concerns in 1972 by means of the United Nations Conference

¹ 'Recommendation by the Committee of Ministers of the Council of Europe on the role of culture to address global challenges' (KEA, 20 May 2022) <<https://keanet.eu/recommendation-coe-role-culture-global-challenges/>> accessed 9 December 2022.

² 'Public health and environment' (World Health Organization) <www.who.int/data/gho/data/themes/public-health-and-environment> accessed 10 December 2022.

on the Human Environment in Stockholm.³ In fact, this conference stamped the beginning of a discussion between industrialised and developing countries on the relationship between the well-being of individuals on a global level, pollution of air, water and sea, and economic growth. During such period of time, United Nations member states affirmed that individuals held a basic right to ‘an environment of a quality that permits a life of dignity and well-being’,⁴ urging significant action. Subsequently, the Human Rights Council and the United Nations General Assembly were urged to take the necessary action. Since 2008, a number of resolutions concerning human rights and climate change, as well as human rights and the environment, have been tabled by the Maldives, a small island on the frontlines of climate change effects. In recent years, the efforts of the Maldives and its associated states, along with the United Nations Special Rapporteur and the Environment and several non-governmental organisations, have pushed the international arena to declare a novel universal right. Throughout the COVID-19 pandemic, there was a surge of support for United Nations endorsement of this right, whereby such initiative was embraced by over one thousand civil society organisations from across the globe, along with United Nations Secretary-General Antonio Guterres and High Commissioner for Human Rights Michelle Bachelet,⁵ who held that recognising access to a clean, healthy, and sustainable environment as a human right ‘*clearly recognises environmental degradation and climate change as interconnected human rights crises*’.⁶

Subsequently, following its first debate within the 1990s, led by decades of advocacy and support from numerous civil society organisations and groups, the United Nations Human Rights Council stated that having a clean, healthy, and sustainable environment is a human right.⁷ Following such a declaration, Michelle Bachelet held that ‘[b]old action is now required to ensure this resolution on the right to a healthy environment serves as a springboard to push for transformative economic, social and environmental policies that will protect people and nature’.⁸ With decades of constant effort, a prominent resolution with a record voting of 161 in favour and zero

³ ‘United Nations Conference on the Human Environment, 5-16 June 1972, Stockholm’ (*United Nations*) <www.un.org/en/conferences/environment/stockholm1972> accessed 10 December 2022.

⁴ ‘The right to a healthy environment: 6 things you need to know’ (*UN News*) <<https://news.un.org/en/story/2021/10/1103082>> accessed 10 December 2022.

⁵ *ibid.*

⁶ ‘Bachelet hails landmark recognition that having a healthy environment is a human right’ (*United Nations*, 8 October 2021) <<https://www.ohchr.org/en/2021/10/bachelet-hails-landmark-recognition-having-healthy-environment-human-right>> accessed 10 December 2022.

⁷ ‘Why having a clean and healthy environment is a human right’ (*World Economic Forum*) <www.weforum.org/agenda/2021/11/why-having-a-clean-and-healthy-environment-is-a-human-right/> accessed 10 December 2022.

⁸ ‘Bachelet hails landmark recognition that having a healthy environment is a human right’ (n 6).

votes against, was adopted by the United Nations General Assembly on the 28th of July 2022, wherein the right to a clean, healthy, and sustainable environment was recognised as a human right. In view of such, states, international organisations, and businesses are called upon by the United Nations General Assembly to increase efforts in ensuring a clean, healthy, and sustainable environment across the world.⁹ In this regard, it is highlighted by the relevant resolution¹⁰ that the right to a clean, healthy, and sustainable environment is ‘*related to other rights and existing international law*’,¹¹ and its advancement ‘*requires the full implementation*’¹² of multilateral environment agreements ‘*under the principles of international environmental law*’.¹³

3. Conclusion

Even though the right to a clean, healthy, and sustainable environment has been recognised as an intrinsic human right on a global level through the United Nations General Assembly, action and acknowledgement is even required on a narrow stance as the smallest steps contribute to the bigger changes. Taking into account the fact that ‘*the triple planetary crises of climate change, loss of biodiversity and pollution*’¹⁴ are critical in the enjoyment of human rights, the Committee of Ministers of the Council of Europe has emphasised the rising acknowledgement of the right to a clean, healthy, and sustainable environment within international legal instruments, policies, and national constitutions and legislation. The Council of Europe, in this regard, within Recommendation CM/REC (2022)20¹⁵ concerning human rights and environmental protection, which was approved on the 27th of September 2022, called on its 46 member states to proactively explore in recognising the right to a clean, healthy, and sustainable environment as a

⁹ ‘UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment’ (*SDG Knowledge Hub*) <<https://sdg.iisd.org/news/unga-recognizes-human-right-to-cleanhealthy-and-sustainable-environment/>> accessed 10 December 2022.

¹⁰ ‘The human right to a clean, healthy and sustainable environment : draft resolution’, *United Nations General Assembly* (United Nations Digital Library 2022) <<https://digitallibrary.un.org/record/3982508?ln=en>> accessed 10 December 2022.

¹¹ *ibid.*

¹² *ibid.*

¹³ *ibid.*

¹⁴ Council of Europe, ‘Committee of Ministers calls on member states to recognise the right to a clean, healthy and sustainable environment as a human right’ (*Portal*, 27 September 2022) <www.coe.int/en/web/portal/-/committee-of-ministers-calls-on-member-states-to-recognise-the-right-to-a-clean-healthy-and-sustainable-environment-as-a-human-right> accessed 11 December 2022.

¹⁵ Recommendation CM/Rec(2022)20 of the Committee of Ministers to Member States on human rights and the protection of the environment (*Council of Europe*, 27 September 2022) <https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a83df1> accessed 11 December 2022.

human right on a national plane.

By means of such actions, individuals and environmental organisations resort in the filing of lawsuits, wherein court action is regarded as an invaluable route in safeguarding present citizens' lives and the lives of future generations. In order to acquire a perception of such, reference may be to a landmark Dutch judgement,¹⁶ wherein the Dutch government was compelled by the Court to take the necessary measures to reduce domestic greenhouse-gas emissions by at least 25% by the end of the year 2020. Within its decision, the Court highlighted scientific consensus that the 1.5°C warming threshold would pose '*a serious degree of danger*'¹⁷ to Dutch citizens. By 2020, the government achieved 24%, and claimants are now seeking to hold the government accountable.¹⁸ Moreover, a historic triumph for the climate was embraced in 2021 where, within a lawsuit¹⁹ filed by environmental activities, the Paris Administrative Court deemed the state of France guilty of failing to achieve its pledges to reduce greenhouse gas emissions, depicting that the 'court system is becoming an ally in [the] fight against climate change'.²⁰

Following such string of judgments, with the aim of compelling domestic governments in reducing greenhouse gas emissions, and staying within the remit of their Paris Agreement commitments, one is naturally inclined to view the manner in which the right to a clean, healthy, and sustainable environment shall be applied and dealt with in court. With the state of Germany being one of the substantial industrial powerhouses around the world, Europe is seeing a court case concerning the aforementioned human right. Indeed, a group of seven individuals deriving from Berlin, Munich, Frankfurt, and Düsseldorf, have filed a human rights infringement lawsuit against the German government. By holding ground on the 2022 resolution adopted by the United Nations General Assembly, and the recommendation of the Committee of Ministers, the applicants argued that the '*right to breathe clean and healthy air is a human right*' which should be protected by the government.²¹

¹⁶ *Urgenda Foundation v State of the Netherlands*, District Court of the Hague and The Hague Court of Appeal, 24 June 2015, HAZA C/09/00456689 (The Netherlands).

¹⁷ *ibid.*

¹⁸ 'Air pollution: The lawsuits that are holding governments to account' (*World Economic Forum*) <www.weforum.org/agenda/2022/10/lawsuits-to-save-the-planet/> accessed 11 December 2022.

¹⁹ *Notre Affaire à Tous and Others v France*, Paris Administrative Court (3 February 2021) 1904967, 1904968, 1904972, 1904976/4-1 (France).

²⁰ NEWS WIRES, 'Court orders France to meet its own greenhouse gas reduction targets' (*France 24*, 14 October 2021) <www.france24.com/en/france/20211014-court-orders-france-to-meet-its-own-greenhouse-gas-reduction-targets> accessed 11 December 2022.

²¹ 'Air pollution: The lawsuits that are holding governments to account' (n 18).



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