

HUMAN RIGHTS AND THE ENVIRONMENT

**HUMAN RIGHTS, THE ENVIRONMENT,
AND THE RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT**

**MEGAN DONALD
DECEMBER 2022**

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KEY MESSAGES AND RECOMMENDATIONS

KEY MESSAGES

Climate change and environmental degradation pose severe threats to the enjoyment of all human rights, particularly the rights of those who are already disadvantaged and marginalized. A healthy environment is therefore indispensable for the full realization of human rights.

Human rights jurisprudence demonstrates that the environmental dimensions of human rights are important for both procedural and substantive human rights. The relationship between the environment and human rights has also resulted in the recognition of a distinct environmental right. Environmental rights have been included in regional human rights instruments as well as international human rights instruments targeting certain groups, including indigenous peoples, peasants and other people working in rural areas. Until recently, a universal right to a healthy environment was not recognized at the international level.

In 2021, Human Rights Council resolution 48/13 recognized the right to a clean, healthy and sustainable environment. This recognition has been welcomed, and holds much potential for strengthening human rights and environmental protection. A similar resolution was made in July 2022 by the General Assembly. Although neither of the resolutions elaborates on the scope or content of the right, many commentators agree that key elements of the right are captured in the work of the Special Rapporteur on human rights and the environment.

Although these resolutions are not directly binding, the recognition of the right to a clean, healthy and sustainable environment carries with it a number of important benefits, including the potential to support efforts for formal (and binding) recognition of the right elsewhere. The resolutions can also advance the integration of the environment and human rights within the Human Rights Council and the General Assembly.

There are opportunities for both the Human Rights Council and the General Assembly to incorporate references to the right in their future resolutions when addressing matters that concern the environment and human rights. This mainstreaming of the right to a clean, healthy and sustainable environment can aid in the development and implementation of the right itself, as well as in the development of the relationship between human rights and the environment in international law.

RECOMMENDATIONS

- The Human Rights Council and the General Assembly should affirm the foundational scope and content of the right to a clean, healthy and sustainable environment as reflected in the work of the Special Rapporteur on human rights and the environment, particularly the Framework Principles on Human Rights and the Environment, and the Good Practices reports.
- Future resolutions from the General Assembly that concern the implementation of multilateral environmental agreements (MEAs) should be drafted in accordance with the recognition that the implementation of such MEAs is necessary for the realization of the right to a clean, healthy and sustainable environment according to Human Rights Council resolution 48/13.
- Where future resolutions concern human rights with a close relationship to the environment, those resolutions should include specific reference to the right to a clean, healthy and sustainable environment.
- Where future resolutions relate to environmental matters, the language and content of the Framework Principles on Human Rights and the Environment and the elements of the right to a clean, healthy and sustainable environment should be included and referenced where possible.
- The relationship between human rights and the environment, and between human rights law and international environmental law, should be further explored and developed in order to understand the relationship between the right to a clean, healthy and sustainable environment and these branches of international law.

1. INTRODUCTION¹

Human rights and the environment are deeply intertwined. The realization of human rights depends on a healthy environment, and effective environmental protection is not possible without taking human rights into account. This relationship is underscored in the recognition of the right to a clean, healthy and sustainable environment by the Human Rights Council and the General Assembly.

This paper provides a background to the relationship between human rights and the environment; considers the role of the right to a clean, healthy and sustainable environment; and makes recommendations for strengthening the linkages between human rights and the environment within the resolutions of the Human Rights Council and the General Assembly.

Part 2 of the paper addresses the relationship between human rights and the environment. This is done by: examining the interdependence between these two areas; exploring the links between human rights and the environment in regional and international jurisprudence; and considering the relationship between international environmental law and human rights.

The right to a clean, healthy and sustainable environment is examined in part 3 of the paper. This part considers the history of this right as well as its content and scope. Thereafter, the possible implications of the recent recognition of the right are explored.

Finally, part 4 examines recent resolutions of the Human Rights Council and the General Assembly with a view to identifying the links between human rights and the environment, and considering the possibilities for including the right to a clean, healthy and sustainable environment in future resolutions.

¹ Some portions of part 2A and 3A(1) of this background paper are derived from chapters 1 and 2 of M. Donald, *Greening the Covenant: Integrating Environmental Considerations in the Interpretation of States Parties' Obligations under Article 2(1) of the International Covenant on Economic Social and Cultural Rights*, unpublished LLD dissertation, Stellenbosch University, 2021.

2. THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT

A. THE INTERDEPENDENCE OF HUMAN RIGHTS AND THE ENVIRONMENT

The well-being and survival of humankind is inextricably connected to, and dependent on, the environment. The state of the environment has extensive consequences for the enjoyment of human rights. It is widely acknowledged, and self-evident, that the very existence of human beings is dependent on the environment and the resources it provides.² The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) explains:

'Nature, through its ecological and evolutionary processes, sustains the quality of the air, fresh water and soils on which humanity depends, distributes fresh water, regulates the climate, provides pollination and pest control and reduces the impact of natural hazards'.³

Despite this reality, the environment and the life-supporting services it provides are subject to numerous threats largely driven by human activity. Scientific evidence shows that 'atmospheric, geological, hydrological, biological and other Earth System processes are being altered by human activity',⁴ and there is a 'rapid decline' in ecosystems and biodiversity.⁵ In particular, climate change has resulted in significant impacts, including changes to hydrological systems; patterns and behaviours of terrestrial, freshwater and marine species; and crop yields.⁶ A recent report from the IPCC describes the widespread impacts of climate change as follows:

² IPBES, 'Summary for policymakers', in S Díaz et al (eds), *Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*, 2019, p 10. See also G. Handl 'Human Rights and Protection of the Environment' in A. Eide, C. Krause and A Rosas (eds) *Economic, Social and Cultural Rights: A Textbook* 2nd edn, 2001, Martinus Nijhoff Publishers, p 303.

³ IPBES, 'Summary for policymakers' supra fn 2, p 10.

⁴ UNEP, *Global Environment Outlook 5: Environment for the Future We Want*, 2012 p xviii.

⁵ IPBES, 'Summary for policymakers' supra fn 2, p 11. See also UNEP, *Global Environment Outlook 6: Summary for Policymakers*, 2019, p 8; UNEP, *Global Environment Outlook 6: Healthy Planet, Healthy People*, 2019, pp 153-154.

⁶ IPCC, *Synthesis Report, Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, 2014, p 6. See also O. Hoegh-Guldberg et al, 'Impacts of 1.5°C Global Warming on Natural and Human Systems' in V. Masson-Delmotte et al (eds) *Global Warming of 1.5°C: An IPCC Special Report on the Impacts of Global Warming of 1.5°C above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty*, 2018.

'Human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability. Some development and adaptation efforts have reduced vulnerability. Across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected. The rise in weather and climate extremes has led to some irreversible impacts as natural and human systems are pushed beyond their ability to adapt.'⁷

The impact of these environmental challenges on human rights is evident, and has been well-documented.⁸ It is widely recognized that environmental degradation and climate change pose serious threats to civil and political rights as well as economic, social and cultural rights, including the rights to life;⁹ health;¹⁰ food;¹¹ water;¹² housing;¹³ and the right to respect for privacy, family life and home.¹⁴ This includes, for example, the threat of hazardous wastes to the rights to life and health; the threat of climate change to the rights to life, health, food, water, hous-

7 IPCC, 'Summary for Policymakers' in H.-O. Pörtner et al (eds) *Climate Change 2022: Impacts, Adaptation, and Vulnerability—Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, 2022, pp 7-8.

8 Human Rights Council, [Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Mapping Report](#), UN doc A/HRC/25/53, 30 December 2013, §§17-25; Human Rights Council, [Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Climate Change](#), UN doc A/HRC/31/52, 1 February 2016, §§23-32; Human Rights Council, [Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Children's Rights and the Environment](#), UN doc A/HRC/37/58, 24 January 2018, §§31-37; Human Rights Council, [Report of the Special Rapporteur on Extreme Poverty and Human Rights: Climate Change and Poverty](#), UN doc A/HRC/41/39, 25 June 2019, §§8-10; [UN Environment Programme, Climate Change and Human Rights](#), 2015, pp 2-8 and 12. See also, for example, S. McInerney-Lankford, M. Darrow & L. Rajamani, *Human Rights and Climate Change: A Review of the International Legal Dimensions*, World Bank, 2011, pp 11-19.

9 See, for example, S. Atapattu, *Human Rights Approaches to Climate Change*, Routledge, 2016, p 76; D.K. Anton and D.L. Shelton, *Environmental Protection and Human Rights*, Cambridge University Press, 2011, pp 436-463; [McInerney-Lankford et al, Human Rights and Climate Change](#), supra fn 8, pp 12-14.

10 See, for example, Atapattu, *Human Rights Approaches to Climate Change*, supra fn 9, pp 77-79; [McInerney-Lankford et al, Human Rights and Climate Change](#), supra fn 8, pp 15-16.

11 See, for example, Atapattu, *Human Rights Approaches to Climate Change*, supra fn 9, pp 80-82; A Franca 'Climate Change and Interdependent Human Rights to Food, Water and Health' in O Quirico and M Boumghar (eds) *Climate Change and Human Rights: An International and Comparative Law Perspective*, Routledge, 2017, pp 90-91; S. Jodoin & K. Lofts *Economic, Social and Cultural Rights and Climate Change: A Legal Reference Guide*, 2013, pp 65-66; [McInerney-Lankford et al, Human Rights and Climate Change](#), supra fn 8, pp 14-15.

12 See, for example, Atapattu, *Human Rights Approaches to Climate Change*, supra fn 9, pp 82-84; Anton and Shelton, *Environmental Protection and Human Rights*, supra fn 9, pp 463-487; Franca 'Climate Change and Interdependent Human Rights to Food, Water and Health', supra fn 11, pp 90-91; [McInerney-Lankford et al, Human Rights and Climate Change](#), supra fn 8, pp 16-17; Jodoin and Lofts, *ESCR and Climate Change*, supra fn 11, pp 65-66.

13 See, for example, Atapattu, *Human Rights Approaches to Climate Change*, supra fn 9, pp 79-80; [McInerney-Lankford et al, Human Rights and Climate Change](#), supra fn 8, pp 17-18; Jodoin and Lofts, *ESCR and Climate Change*, supra fn 11, pp 65-66.

14 See, for example, Anton and Shelton, *Environmental Protection and Human Rights*, supra fn 9, pp 487-512; Jodoin and Lofts, *ESCR and Climate Change*, supra fn 11, pp 50-51.

ing and self-determination; and the threats of environmental degradation, desertification and climate change to the right to food.¹⁵

What is particularly concerning is that nearly all these impacts from climate change and environmental degradation are significantly worse for already disadvantaged populations, including women, children, the elderly, peasants, indigenous peoples and, more broadly, developing states.¹⁶ For example, the former Special Rapporteur on extreme poverty and human rights, Philip Alston, suggests that, unless human rights are considered in climate change responses, the inequality resulting from climate change could become a form of 'climate apartheid',¹⁷ and that climate change constitutes 'an unconscionable assault on the poor'.¹⁸ The UNDP has noted that climate change and related disasters are 'disequalizing'¹⁹ as they 'deepen existing social and economic fault lines'.²⁰ The deeply disproportionate and discriminatory nature of the impacts of environmental harm suggests that violations of the right to non-discrimination in this context should be taken more seriously. The discriminatory nature of environmental impacts is demonstrated, for example, in the thematic report on non-toxic environments by the Special Rapporteur on human rights and the environment, where the human rights impacts of 'sacrifice zones' are examined.²¹

The human rights risks and impacts linked to environmental crises are extensive and severe. There is no doubt that environmental degradation, and climate change in particular, poses an immense and critical threat to the realization of all human rights. Although the ICJ's decision in *Gabčíkovo-Nagymaros Project (Hungary/Slova-*

15 Human Rights Council, [Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment](#), John H. Knox: [Preliminary Report](#), UN doc A/HRC/22/43, 24 December 2012, §19.

16 See [UNEP, GEO-6: Healthy Planet, Healthy People](#), supra fn 5, pp 46, 48, 76, 86, 126 & 128; [UNEP, GEO-6: Summary for Policymakers](#), supra fn 5, pp 12 & 9; [Hoegh-Guldberg et al, 'Impacts of 1.5°C Global Warming'](#), supra fn 6, pp 234-235 & 244-245; [J. Roy et al, 'Sustainable Development, Poverty Eradication and Reducing Inequalities'](#) in V. Masson-Delmotte et al (eds) *Global Warming of 1.5°C: An IPCC Special Report*, 2018, pp 452-453; [IPCC 'Summary for Policymakers'](#) in V. Masson-Delmotte et al (eds) *Global Warming of 1.5°C: An IPCC Special Report (2018)* p 9; [IPBES, 'Summary for policymakers'](#) supra fn 2, p 15.

17 Human Rights Council, [Report of the Special Rapporteur on Extreme Poverty and Human Rights: Climate Change and Poverty](#), UN doc A/HRC/41/39, 25 June 2019, §§11-15 and 46-50.

18 *Ibid*, §87. In relation to inequality and climate change, see also [UNDP, Human Development Report 2019](#), 2019, pp 178-184 and 195-196.

19 In relation to disequalizing impacts see also [UNDP, Human Development Report 2011: Sustainability and Equity: A Better Future for All](#), 2011, pp 4, 7 and 59-61.

20 *Ibid*, p 179. See also p 184 where the report notes that this disproportionate impact is not inevitable: 'The disproportionate impacts on poor countries—and poor and vulnerable people within countries—largely reflect and are likely driven at least in part by structural inequalities. If such inequalities—across income, wealth, health, education and other elements of human development—are in no small part the result of social choices, as this Report argues, the course of climate change and the way it ultimately affects inequality have a lot of choice built in. There still is time to choose differently.'

21 Human Rights Council, [Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: The right to a clean, healthy and sustainable environment: Non-toxic environment](#), UN doc A/HRC/49/53, 12 January 2022.

kia)²² did not directly address human rights, the much-quoted separate opinion of Weeramantry J affirmed the dependence of human rights, and human life, on the environment. The separate opinion asserts that protection of the environment is:

‘[A] vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.’²³

Human rights cannot be adequately respected, protected, or fulfilled without environmental protection. The rights of those who are already marginalized and disadvantaged are most at risk. A healthy environment is therefore indispensable for the full realization of human rights for everyone.

B. HUMAN RIGHTS AND THE ENVIRONMENT IN REGIONAL AND INTERNATIONAL JURISPRUDENCE

There is a wealth of international and regional jurisprudence addressing the environmental dimensions of human rights. This section discusses a selection of these decisions for the purpose of illustrating the relationship between human rights and the environment.²⁴ The human rights that have been linked to environmental matters in the jurisprudence include substantive rights such as the rights to life, development, privacy, health, and property, as well as procedural rights such as the rights of access to information, public participation, and access to justice. In some contexts, distinct environmental rights have also been recognized and applied.

1. SUBSTANTIVE RIGHTS

One of the earliest cases recognizing a relationship between substantive human rights and the environment dealt with an infringement of the right to respect for private and family life in article 8 of the European Convention on Human Rights. In *López Ostra v Spain*²⁵ the European Court of Human Rights (ECtHR) held that ‘severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family

22 ICJ, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 25 September 1997.

23 ICJ, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, Separate Opinion of Vice-President Weeramantry, 25 September 1997, p 4.

24 For more detail on the links human rights and the environment, see UN Environment Programme, *Compendium on Human Rights and the Environment: Selected International Legal Materials and Cases*, 2014; Human Rights Council, *Report of the Independent Expert: Mapping Report*, UN doc A/HRC/25/53, supra fn 8, §§26-78; *Report of the Independent Expert: Preliminary Report*, UN doc A/HRC/22/43, supra fn 15, §24; Council of Europe and European Court of Human Rights, *Guide to the case-law of the European Court of Human Rights: Environment*, 2021.

25 ECtHR, *López Ostra v Spain*, Judgment, App no 16798/90, 9 December 1994.

life adversely, without, however, seriously endangering their health’.²⁶ Later cases before the ECtHR also confirm that pollution can result in a violation of article 8 even in the absence of proven harm to health.²⁷

In the context of environmental risks associated with lignite mining activities, the European Committee on Social Rights found violations of the European Social Charter in *Marangopoulos Foundation for Human Rights v Greece*, including the rights to just conditions at work, safe and healthy working conditions, and the protection of health.²⁸ These violations related to the state’s failure to provide adequate protection from occupational risk for workers as well as protection from the impacts of pollution for those living in the vicinity of the mining operations.²⁹ Significantly, the Committee also asserted in this 2006 decision that the right to health in the Charter, read with the right to life in the European Convention, implies a right to a healthy environment.³⁰

One of the most significant cases from the African context is that of *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights v Nigeria*.³¹ In addition to applying the environmental right in the African Charter on Human and Peoples’ Rights (discussed further below), the African Commission found that the state had violated the rights to non-discrimination, life and health in the course of its involvement in oil production activities that led to severe environmental pollution and degradation.

In *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*,³² the African Commission addressed the link between the environment and the religious and cultural rights of indigenous communities.³³ Forced evictions and restricted access to ancestral lands for the establishment of a game reserve was a violation of these rights as well as the rights to property and natural resources. In addition, the African Commission found that the right to development in article 22 of the African Charter had been violated due to the failure to provide for the needs of the Endorois community in the development process or to allow for adequate compensation or benefit-sharing.³⁴

26 Ibid, §51.

27 ECtHR, *Fadeyeva v Russia*, Judgment, App no 55723/00, 09 June 2005; ECtHR, *Taşkin and Others v Turkey*, Judgment, App no 46117/99, 10 November 2004.

28 ECtteeSR, *Marangopoulos Foundation for Human Rights (MFHR) v Greece*, Complaint no 30/2005, 6 December 2006.

29 Ibid; UNEP, *Compendium on Human Rights and the Environment*, supra fn 24, pp 57-58.

30 See ECtteeSR, *Marangopoulos Foundation for Human Rights (MFHR) v Greece*, Complaint no 30/2005, 6 December 2006, §195.

31 ACommHPR, *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights v Nigeria*, Comm no 155/96, 27 October 2001.

32 ACommHPR, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, Comm no 276/2003, 25 November 2009.

33 Ibid, §§44 and 250.

34 Ibid, §§269-298.

The relationship between indigenous peoples' property rights and the environment is a significant feature of environment-related jurisprudence from the Inter-American human rights system. Indigenous peoples often depend on their territories and natural resources for subsistence and are therefore particularly affected by environmental degradation. In *Mayagna (Sumo) Awas Tingni Community v Nicaragua* the state granted commercial concessions for the use and development of property and natural resources on forested indigenous land.³⁵ The Inter-American Court of Human Rights (IACtHR) recognized, for the first time, the collective property rights of an indigenous community and found that these rights were violated by the state.³⁶ The Inter-American Commission on Human Rights (IACHR) was faced with a similar set of facts in the case of *Maya Indigenous Communities of the Toledo District v Belize*.³⁷ Here the communal property rights of indigenous peoples were affirmed, and it was held that granting concessions for logging and oil development activities without consultation constituted a violation of those rights. Similarly, in *Saramaka People v Suriname* the conferral of logging and mining concessions without consultation was at issue before the IACtHR.³⁸ The Court held that the survival of indigenous peoples depends on the use of their territories and natural resources and that:

'the natural resources found on and within indigenous and tribal people's territories that are protected under Article 21 [the right to property] are those natural resources traditionally used and necessary for the very survival, development and continuation of such people's way of life'.³⁹

The *Saramaka* decision is also significant as it recognizes that although the people in question were not indigenous, the jurisprudence on indigenous peoples' property rights also applied to them. This is due to their similarities with indigenous communities, including their 'distinct social, cultural, and economic characteristics [...] that require special measures under international human rights law in order to guarantee their physical culture and survival'.⁴⁰

The decision of the UN Human Rights Committee in *Ioane Teitiota v New Zealand*⁴¹ concerns the impacts of climate change and related environmental degradation on the right to life.⁴² The decision recognizes that 'environmental degradation, climate change and unsustainable development constitute some of the most pressing

35 IACtHR, *Mayagna (Sumo) Awas Tingni Community v Nicaragua*, Judgment, Series C no 79, 31 August 2001.

36 Ibid, §153. See also UNEP, *Compendium on Human Rights and the Environment*, supra fn 24, p 109.

37 IACtHR, *Maya Indigenous Communities of the Toledo District v Belize*, Case no 12.053, Rep no 40/04, 12 October 2004.

38 IACtHR, *Saramaka People v Suriname*, Judgment (Preliminary Objections, Merits, Reparations and Costs), Series C no 172, 28th November 2007.

39 Ibid, §122.

40 Ibid, §86; UNEP, *Compendium on Human Rights and the Environment*, supra fn 24, p 115-117.

41 HRCttee, *Ioane Teitiota v New Zealand*, Comm no 2728/2016, UN doc CCPR/C/127/D/2728/2016, 23 September 2020.

42 Ibid, §9.4-9.5.

and serious threats to the ability of present and future generations to enjoy the right to life'.⁴³ On the basis of these threats to life, Ioane Teitiota, a Kiribati national, sought and was refused asylum in New Zealand as a climate refugee. Although the Human Rights Committee did not find a violation in this case, the Committee did indicate that both sudden and slow-onset harm from climate change could violate the right to life:

'The Committee is of the view that without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending states. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized'.⁴⁴

In a recent decision, the UN Human Rights Committee found that Australia violated the rights of Torres Strait Islanders by failing to implement adequate measures to adapt to the impacts on climate change. In *Daniel Billy and others v Australia*⁴⁵ the Human Rights Committee found violations of article 17 and 27 of the ICCPR. Article 17 concerns arbitrary or unlawful interference with privacy, family, home or correspondence. In finding a violation of article 17, the Committee held that:

'when climate change impacts [...] have direct repercussions on the right to one's home, and the adverse consequences of those impacts are serious because of their intensity or duration and the physical or mental harm that they cause, then the degradation of the environment may adversely affect the well-being of individuals and constitute foreseeable and serious violations of private and family life and the home'.⁴⁶

Article 27 of the ICCPR concerns the right of ethnic, religious and linguistic minorities to, inter alia, enjoy their own culture. The decision affirms that the state's failure to adopt appropriate adaptation measures 'to protect the authors' collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources' constitutes a violation of the Torres Strait Islanders' right in article 27 to enjoy their culture.⁴⁷

As with the decision in *Ioane Teitiota v New Zealand*, a violation of the right to life was alleged by the authors. The Human Rights Committee did not find such a violation, but reiterated that environmental harm could, in principle, infringe on the right to life:

43 Ibid, §9.4.

44 Ibid, §9.11.

45 HRCttee, *Daniel Billy and Others v Australia*, Comm no 3624/2019, UN doc CCPR/C/135/D/3624/2019, 22 September 2022.

46 Ibid, §8.12.

47 Ibid, §8.14.

‘States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life. The Committee considers that such threats may include adverse climate change impacts, and recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.’⁴⁸

It is worth noting that the individual opinion of Committee Member Duncan Laki Muhumuza disagrees with the Committee’s position on article 6.⁴⁹ The Committee Member points out the state’s failure to take measures to reduce emissions or stop promoting the extraction and use of fossil fuels ‘which continue to affect the authors and other islanders, endangering their livelihood, resulting in the violation their rights under article 6 of the Covenant’.⁵⁰ He argues that the Committee should implore the state to take measures to ‘mitigate and adapt to climate change and prevent foreseeable loss of life’.⁵¹ In light of these decisions of the Human Rights Committee, it is not entirely clear what level of severity and immediacy of harm would be sufficient for the Committee to find a violation of the right to life in environment-related cases. Where climate change impacts are concerned, in many instances it is not difficult to argue that the threshold for a violation has already been met.

2. PROCEDURAL RIGHTS

In addition to the range of substantive rights that are impacted by environmental harm, there are a number of significant procedural rights that play an important role in the protection of human rights and the environment. The rights of access to information, public participation, and access to justice are vital for effectively protecting the environment as well as protecting substantive rights from environmental harm.

An important case for procedural environmental rights in the Inter-American context is that of *Claude-Reyes v Chile*.⁵² In this case the IACtHR recognized the fundamental right of access to information as part of the right to freedom of thought and expression in article 13 of the American Convention. The Court held that this right had been violated by a refusal of the State’s Foreign Investment Committee to provide information regarding a forestry exploitation project that would potentially have a significant impact on the environment. The failure of domestic courts to provide a legal remedy also resulted in a violation of the rights to a fair trial and to judicial protection.⁵³

48 Ibid, §8.3.

49 HRCtee, *Daniel Billy and Others v Australia*, Comm no 3624/2019, UN doc CCPR/C/135/D/3624/2019, Annex I, 22 September 2022.

50 Ibid, §11.

51 Ibid, §17.

52 IACtHR, *Claude-Reyes v Chile*, Judgment, Series C no 151, 19 September 2006.

53 Ibid, §§142-143. See also UNEP, *Compendium on Human Rights and the Environment*, supra fn 24, pp 114-115.

The ECtHR has also considered the right to information in the context of environment-related risk. In *Guerra and Others v Italy*,⁵⁴ the Court found that where activities may expose people to health risks (in this case exposure to toxic substances from a chemical factory), article 8 requires effective and accessible procedures to provide access to relevant information concerning the risk or impacts of those activities.⁵⁵

More recently, in *Association Burestop 55 and Others v France*,⁵⁶ the Court held that article 10 of the European Convention does not contain a right to access all information held by public authorities, but that a right to such information may be guaranteed in certain circumstances, particularly where environmental information is concerned.⁵⁷ In that case environmental associations complained of inaccurate information provided by a national agency regarding the risks of a proposed storage site for radioactive waste and the Court held that accurate information was necessary for the exercise of the right to freedom of expression in article 10.⁵⁸ The Court also found that the right of access to information requires a remedy that allows for review of the content and quality of such information, particularly where it concerns a major environmental risk.⁵⁹

3. ENVIRONMENTAL RIGHTS

In addition to other substantive and procedural rights, there is also jurisprudence that recognizes or applies distinct environmental rights. As noted above, the environmental rights in article 24 of the African Charter were applied in the *SERAC v Nigeria* decision. In this case the exploitation of oil reserves and dumping of toxic waste in a region of Nigeria ultimately led to a range of severe health consequences for those living in the area.⁶⁰ The African Commission noted that the rights to health and to a general satisfactory environment ‘recognize the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual’.⁶¹ The African Commission found violations of the rights to non-discrimination, life, health, family life, natural resources and the environment. The case demonstrates the interdependence of environmental rights and economic, social, cultural, civil and political rights.

In the European context a significant milestone for environmental rights was the recognition of a right to a healthy environment by the European Committee of

54 ECtHR, *Guerra and Others v Italy*, Judgment, App no 14967/89, 19 February 1998.

55 COE and ECtHR, *Case-law of the ECtHR: Environment*, supra fn 24, p 52, §§125-128.

56 ECtHR, *Association Burestop 55 and Others v France*, Judgment, App no 56176/18, 1 July 2021.

57 COE and ECtHR, *Case-law of the ECtHR: Environment*, supra fn 24, p 63 §§148 and 149.

58 Ibid, p 63 §149.

59 Ibid, p 63 §§151 and 152.

60 ACommHPR, *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights v Nigeria*, Comm no 155/96, 27 October 2001, §2.

61 Ibid, §51.

Social Rights in *Marangopoulos Foundation for Human Rights v Greece*.⁶² In that case the Committee took note of the recognized link between ‘the protection of health and a healthy environment’ and interpreted the right to health in article 11 of the European Social Charter ‘as including the right to a healthy environment’.⁶³ The Committee explained that there is ‘clear complementarity’ between article 11 of the Charter and the right to life in the European Convention, concluding that measures to give effect to article 11 must include those ‘to remove the causes of ill-health resulting from environmental threats such as pollution’.⁶⁴

The ECtHR has also made reference to environmental rights, for example in *Kaminskas v Lithuania*.⁶⁵ In this case the applicant alleged that his right to respect for his home had been violated by a demolition order, while the state argued, inter alia, that the home in question was in contravention of a prohibition against building houses on forest land. The Court noted that it would be slow to protect those who establish a home on environmentally protected land in defiance of the law, and that to do otherwise ‘would be to encourage illegal action to the detriment of the protection of the environmental rights of other people in the community’.⁶⁶ The context and earlier decisions suggest that the environmental rights referred to are framed as a right to environmental protection.⁶⁷

Environmental rights have been recognized and explored in more detail in the Inter-American system. In 2018, in response to a request from Colombia, the Inter-American Court of Human Rights issued a landmark advisory opinion on the environmental obligations of states.⁶⁸ Here the IACtHR affirmed that ‘a healthy environment is a fundamental right for the existence of humankind’.⁶⁹ The Court noted that this right is recognized in the San Salvador Protocol and that it should also be understood as part of the economic, social and cultural rights in article 26 of the American Convention.⁷⁰ Separating the right from substantive human rights that have environmental dimensions, the court explained that ‘the right to a healthy environment as an autonomous right differs from the environmental content that arises from the protection of other rights, such as the right to life or the right to personal integrity’.⁷¹ The Court goes on to affirm that the right ‘protects the components of the environment, such as forests, rivers and seas, as legal

62 ECtteeSR, *Marangopoulos Foundation for Human Rights (MFHR) v Greece*, Complaint no 30/2005, 6 December 2006.

63 Ibid, §195.

64 Ibid, §202. The Committee expands on the content of these obligations at §203.

65 ECtHR, *Kaminskas v Lithuania*, Judgment, App no 44817/18, 4 August 2020.

66 Ibid, §56.

67 See ECtHR *Chapman v United Kingdom*, Judgment, App no 27238/95, 18 January 2001, §102 where a similar statement is made by the ECtHR.

68 IACtHR, *The Environment and Human Rights*, Advisory Opinion OC-23/17, 15 November 2017.

69 Ibid, §59. See the discussion of the right at §§56-69.

70 Ibid, §§56-57.

71 Ibid, §63.

interests in themselves’.⁷² This opinion therefore affirms that a distinct and autonomous right to a healthy environment exists in the Inter-American system and this right is interpreted as including autonomous rights of nature.

This right to a healthy environment was applied in *Indigenous Communities of the Lhaka Honhat (Our Land) Association v Argentina*⁷³ where the Court relied on the 2018 Advisory Opinion⁷⁴ and affirmed the assertion that the right to a healthy environment includes protection of the environment, noting that this ‘does not mean that other human rights will not be violated as a result of damage to the environment’.⁷⁵ The Court expanded on the content of the right to a healthy environment and noted the importance of the principle of prevention of environmental harm in customary international law.⁷⁶

As the abovementioned jurisprudence demonstrates, the environmental dimensions of procedural and substantive human rights have been addressed before human rights courts and bodies. In some cases, distinct environmental rights have also been recognized or applied. These cases confirm the inextricable link between human rights and the environment. This link also requires us to consider the relationship between human rights and international environmental law.

C. INTERNATIONAL ENVIRONMENTAL LAW AND HUMAN RIGHTS

The section briefly discusses the complex relationship between international environmental law and human rights. Some of the ways in which international environmental law can be relevant for the implementation and adjudication of human rights include providing relevant guidelines and standards in environment-related matters; establishing principles to guide decision-making that concerns the environment; recognizing relevant substantive and procedural rights in the context of environmental matters; and broadening the range of enforcement mechanisms available.⁷⁷ International environmental law also contributes to the formation of customary international law which in turn influences the interpretation and application of human rights law.

The jurisprudence discussed above demonstrates that integrating environmental considerations within human rights can broaden their scope and content. Environmental law can be an important guide in ensuring the proper implementa-

72 Ibid, §62.

73 IACommHR, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v Argentina*, Judgment, Series C no 400, 6 February 2020.

74 Ibid, §203, for example.

75 Ibid.

76 See A. M. Bernal, ‘Lhaka Honhat Association vs. Argentina: the human right to environment in the Inter-American Court’, *Global Network for Human Rights and the Environment*, 10 April 2020.

77 See S. Chuffart and J.E. Viñuales ‘From the Other Shore: Economic, Social, and Cultural Rights from an International Environmental Law Perspective’ in E. Riedel, G. Giacca and C. Golay (eds) *Economic, Social and Cultural Rights in International Law: Contemporary Issues and Challenges*, Oxford University Press, 2014.

tion of these environmental dimensions of human rights. For instance, Chuffart and Viñuales use the example of the right to water to argue that ‘environmental treaties may be important for the proper expression and grounding of certain obligations arising from ESC rights’.⁷⁸ Environmental law instruments can provide normative content for these environmental dimensions, including standards and regulations on the conservation, quantity and quality of water.⁷⁹

Reliance on international environmental law instruments is also seen in *Marangopoulos* where the Committee on Social Rights relied on environmental standards in a number of international and regional environmental instruments in finding a violation of the right to health resulting from pollution. It has therefore been suggested that this decision ‘sets a precedent for the role of international environmental law instruments in the interpretation and application of human rights law’.⁸⁰

In addition to reliance on specific international environmental law instruments, the principles of international environmental law can serve as an important guide in the interpretation and adjudication of human rights.⁸¹ For example, the precautionary principle has gained prominence in human rights decisions such as Advisory Opinion 23/17 where the IACtHR asserts that:

‘States must act in keeping with the precautionary principle in order to protect the rights to life and to personal integrity in cases where there are plausible indications that an activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty.’⁸²

The Committee on Economic Social and Cultural Rights has also referred to the precautionary principle in its General Comment on Science as well as concluding observations concerning environmental harm.⁸³ Principles of international environmental law such as the precautionary principle can inform the interpretation and application of human rights in environment-related matters. In instances where these principles become part of customary international law, their weight and influence are even greater.⁸⁴

78 Ibid, p 294.

79 Ibid, pp 291-295 and 293-294. In relation to the example of the right to water, the authors refer to the relevance of the Protocol on Water and Health under the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes.

80 UNEP, *Compendium on Human Rights and the Environment*, supra fn 24, p 58.

81 See, for example, Donald, *Greening the Covenant*, supra fn 1, pp 82-132.

82 IACtHR, *Advisory Opinion OC-23/17*, supra fn 68, §180. The precautionary principle is discussed at §§175-180.

83 See CESCR, *General Comment No 25 on Science and Economic, Social and Cultural Rights*, UN doc E/C12/GC/25, 7 April 2020 §§56, 57 and 71; CESCR, *Concluding Observations on the periodic report of Israel*, UN doc E/C12/ISR/CO/4, 12 November 2019, §45; CESCR ‘*Concluding Observations on the periodic report of Argentina*, UN doc E/C12/ARG/CO/4, 1 November 2018, §60. For a detailed examination of principles of international environmental law in the context of the International Covenant on Economic, Social and Cultural Rights, see Donald, *Greening the Covenant*, supra fn 1 and M. Donald, ‘The role of principles of international environmental law in greening the interpretation of human rights: The case of the UN Committee on Economic, Social and Cultural Rights’ in *The Future of Environmental Law: Ambition and Reality* (forthcoming).

84 This is the case with, for example, the no-harm principle or the prohibition of transboundary environmental harm.

Turning to enforcement mechanisms, Chuffart and Viñuales argue that the same way in which human rights bodies have included environmental considerations and broadened the scope of human rights to incorporate relevant environmental content, environmental tribunals and bodies could also be utilized for the promotion and advancement of human rights. They refer to the examples of advancing and protecting human rights through the enforcement procedure of the North American Agreement for Environmental Cooperation as well as through the non-compliance procedure of the Protocol on Water and Health.⁸⁵ International environmental law could therefore provide practical mechanisms for the protection of human rights from environmental threats.

Finally, there are also instances where human rights are directly referenced or incorporated within environmental law agreements. Direct reference to human rights is found in the area of international climate law.⁸⁶ Human rights are included in the preamble of the Paris Agreement which states that Parties should:

‘respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity’.

This is an important recognition of the links between climate change and human rights, but it is noteworthy that the agreement did not include human rights in its operative provisions.⁸⁷ A similar paragraph has been included in the preamble of the Glasgow Climate Pact.⁸⁸

Perhaps the most significant reference to human rights in multi-lateral environmental agreements is in the area of procedural environmental rights.⁸⁹ Two prominent regional environmental instruments that include procedural rights are the Aarhus Convention⁹⁰ in the European context and the Escazú Agreement⁹¹ in the Inter-American context. Both agreements refer to principle 10 of the Rio Decla-

85 Chuffart and Viñuales, ‘From the Other Shore’, supra fn 77, p 296.

86 For a more detailed discussion of the human rights dimension of UNFCCC decisions, see CIEL, *Rights in a Changing Climate: Human Rights Under the UN Framework Convention on Climate Change*, 2019, pp 10-27.

87 It has been argued that this is not a barrier to understanding human rights as being part of the Paris Agreement. See, for example, P.G. Ferreira, ‘Did the Paris Agreement Fail to Incorporate Human Rights in Operative Provisions? Not If You Consider the 2016 SDGs’, *Centre for International Governance Innovation*, CIGI Papers No 113, 31 October 2016.

88 *Glasgow Climate Pact*, 2021.

89 Chuffart and Viñuales, ‘From the Other Shore’, supra fn 77, pp 299-307.

90 *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, 1998 (Aarhus Convention).

91 *The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, 2018 (Escazú Agreement).

ration⁹² and establish procedural environmental rights in the regional context, including the rights to access environmental information, to participate in environmental decision-making, and to access justice by challenging decisions related to the environment.⁹³ The Escazú Agreement, concluded almost two decades after the Aarhus Convention, goes even further by recognizing the right to a healthy environment⁹⁴ and providing for the protection of human rights defenders in environmental matters.⁹⁵ Given its content, the Escazú Agreement can be seen as both a human rights and environmental instrument.

⁹² [Rio Declaration on Environment and Development](#), 1992. Principle 10 states the following: ‘Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.’

⁹³ P. Dupuy & J.E. Viñuales *International Environmental Law*, Cambridge University Press, 2018, p 382-386.

⁹⁴ [Escazú Agreement](#), supra fn 91, article 4(1).

⁹⁵ *Ibid*, article 9.

3. THE RIGHT TO A HEALTHY ENVIRONMENT AND ITS VALUE FOR THE PROTECTION OF HUMAN RIGHTS AND THE ENVIRONMENT

A. THE RIGHT TO A HEALTHY ENVIRONMENT: ITS BACKGROUND AND CONTENT

1. THE HISTORY OF THE RIGHT TO A HEALTHY ENVIRONMENT IN INTERNATIONAL LAW

The interdependent relationship between the environment and human rights was recognized in the 1972 Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration).⁹⁶ The Declaration affirmed that ‘[b]oth aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself.’⁹⁷ As this understanding of the relationship between the environment and human rights grew, environmental rights were introduced into regional human rights instruments: the African Charter on Human and Peoples’ Rights in 1981,⁹⁸ the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol) in 1988,⁹⁹ and the Escazú Agreement in 2018.¹⁰⁰ A substantial number of states have also incorporated environmental rights or duties into their national constitutions.¹⁰¹ However, as Knox points out, the recognition of environmental rights ‘came too late to be codified in the major international human rights agreements’ as the Universal Declaration of Human Rights was adopted in 1948, and the International Covenant on

⁹⁶ [Declaration of the United Nations Conference on the Human Environment](#), UN doc A/CONF48/14/Rev1, 16 June 1972.

⁹⁷ *Ibid*, proclamation 1.

⁹⁸ African Charter on Human and Peoples’ Rights, 1981, article 24.

⁹⁹ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), 1999, article 11. See H.M. Osofsky, ‘Learning from Environmental Justice: A New Model for International Environmental Rights’, 24 *Stanford ELJ* 71 (2005) 78.

¹⁰⁰ [Escazú Agreement](#), supra fn 91.

¹⁰¹ For a comprehensive examination of national environmental rights globally see D.R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights and the Environment*, UBC Press, 2012.

Civil and Political Rights (ICCPR)¹⁰² and the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁰³ were both adopted in 1966.¹⁰⁴

Until recently, the question of environmental protection had not been addressed in the international arena through specific environmental rights (with the exception of the regional instruments referred to above).¹⁰⁵ The environmental rights of indigenous peoples were recognized by the General Assembly in the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP).¹⁰⁶ Article 29 of the UNDRIP states that ‘Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources’. This right is also found in the 2018 UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP).¹⁰⁷

In 2018 the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment submitted a report to the General Assembly where he recommended that the right to a healthy environment be formally recognized in a global instrument.¹⁰⁸ This recommendation included three proposals as to how the right could be recognized. Those proposals were as follows: (1) A new international treaty on the environment that incorporates the right;¹⁰⁹ (2) an additional protocol to an existing human rights treaty such as the ICESCR that recognizes the right;¹¹⁰ and (3) a resolution by the General Assembly that recognizes the right.¹¹¹ Although the first two of these recommendations were not followed, the recognition of the right by the General Assembly was finally achieved in 2022.

2. THE CONTENT AND SCOPE OF THE RIGHT TO A HEALTHY ENVIRONMENT: THE WORK OF THE SPECIAL RAPPORTEUR ON HUMAN RIGHTS AND THE ENVIRONMENT

The content and scope of the right to a healthy environment in international law is informed by what has been established in national, regional and international

102 [International Covenant on Civil and Political Rights](#), 1966.

103 [International Covenant on Economic, Social and Cultural Rights](#), 1966.

104 J.H. Knox, ‘Human Rights, Environmental Protection, and the Sustainable Development Goals’, 24 *Wash Intl LJ* (2015) 519.

105 See for example J.H. Knox ‘The Global Pact for the Environment: At the Crossroads of Human Rights and the Environment’, 28 *RECIEL* (2019) 40–47; J.H. Knox & R. Pejan (eds), *The Human Right to a Healthy Environment*, Cambridge University Press, 2018.

106 [UNGA, Declaration on the Rights of Indigenous Peoples](#), UN doc A/RES/61/295, 2 October 2007, article 29.

107 [UNGA, Declaration on the Rights of Peasants and Other People Working in Rural Areas](#), UN doc A/RES/73/165, 21 January 2019, article 18.

108 [UNGA, Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Report of the Special Rapporteur](#), UN doc A/73/188, 19 July 2018, §46.

109 *Ibid.*, §46.

110 *Ibid.*, §47.

111 *Ibid.*, §48.

forums and instruments, including constitutions, domestic courts, international and regional treaties, and a range of regional and international decision-making bodies such as those discussed above. It is beyond the scope of this briefing to consider all these sources in detail. Instead, this section will provide an overview of the findings from comprehensive studies of these sources conducted by the Independent Expert and later Special Rapporteurs on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.¹¹²

The body of work produced by the Independent Expert and Special Rapporteurs examines various sources including international and regional treaties; international, regional and domestic jurisprudence; and domestic constitutions and legislation. The reports presented to the Human Rights Council include scoping and mapping reports on human rights obligations related to the environment, as well as particular thematic reports on climate change, biodiversity, children’s rights, a safe climate, clean air, a healthy biosphere, healthy and sustainable food, and a non-toxic environment. While the full volume of the Independent Expert and Special Rapporteurs’ work cannot be examined here, a useful summation of their findings is set out in the framework principles on human rights and the environment as well as in each mandate holder’s report on good practices. An outline of these findings is provided below.

a. Compilation of Good Practices (2015)

The former Independent Expert submitted a report in 2015 setting out a compilation of good practices concerning human rights obligations relating to the environment.¹¹³ The procedural obligations considered in the report are consistent with those set out in Principle 10 of the Rio Declaration, namely: the obligation to assess environmental impacts and make environmental information public; the obligation to facilitate public participation in environmental decision-making, including through the protection of rights of expression and association; and the obligation to provide access to legal remedies for harm.¹¹⁴ The substantive obligations considered in this report include: the obligation to ‘adopt and implement legal frameworks to protect against environmental harm that may interfere with the enjoyment of human rights’, including through the adoption of constitutional environmental rights;¹¹⁵ the obligation to protect against environment-related human rights abuses caused by non-state actors;¹¹⁶ the obligation to cooperate with

112 See, for example, the Preliminary and Mapping Reports of the former Special Rapporteur in his capacity as Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Human Rights Council, [Report of the Independent Expert: Preliminary Report](#), UN doc A/HRC/22/43, supra fn 15; Human Rights Council, [Report of the Independent Expert: Mapping Report](#), UN doc A/HRC/25/53, supra fn 8.

113 Human Rights Council, [Report of the Independent Expert on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment](#), John H. Knox: [Compilation of Good Practices](#), UN doc A/HRC/28/61, 3 February 2015.

114 *Ibid.*, §22 and 25.

115 *Ibid.*, §72.

116 *Ibid.*, §79.

other states in relation to global and transboundary environmental threats to protect human rights;¹¹⁷ and finally, the cross-cutting obligation to ensure non-discrimination in relation to environmental law and policy, including additional obligations towards those who are most vulnerable to environmental harm.¹¹⁸

b. Framework Principles on Human Rights and the Environment (2018)

At the end of his mandate, the former Special Rapporteur presented his final report which included a set of framework principles on human rights and the environment. These principles ‘set out basic obligations of states under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment’¹¹⁹ and the Special Rapporteur described them as ‘a reflection of actual or emerging international human rights law’.¹²⁰

The Framework Principles echo many of the obligations from the earlier Good Practices report. Principles 1 and 2 affirm the obligations on states to ensure a safe, clean, healthy and sustainable environment,¹²¹ and to respect, protect and fulfil human rights in order to ensure such an environment.¹²² These principles underscore the importance of the interdependence between human rights and environmental protection. The principles also include non-discrimination in the context of the enjoyment of a healthy environment.¹²³

The Framework Principles require states to create a safe environment for human rights and environmental defenders;¹²⁴ to respect and protect freedom of expression, association and peaceful assembly;¹²⁵ to provide for education and public awareness on environmental matters;¹²⁶ and to provide access to environmental information.¹²⁷ Other obligations in the Framework Principles include the obligations to avoid authorizing activities that interfere with human rights;¹²⁸ to require prior assessment of environmental impacts;¹²⁹ to facilitate public participation

117 Ibid, §84.

118 Ibid, §93.

119 Human Rights Council, [Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment](#), UN doc A/HRC/37/59, 24 January 2018, §7.

120 Ibid, §9.

121 Human Rights Council, [Framework Principles on Human Rights and the Environment](#), UN doc A/HRC/37/59, annex, 24 January 2018, principle 1.

122 Ibid, principle 2.

123 Ibid, principle 3.

124 Ibid, principle 4.

125 Ibid, principle 5.

126 Ibid, principle 6.

127 Ibid, principle 7.

128 Ibid, principle 8.

129 Ibid.

and take public views into account;¹³⁰ and to provide access to remedies where human rights or domestic laws are violated.¹³¹ States are also required to maintain environmental standards that respect, protect and fulfil human rights;¹³² to ensure effective enforcement of such standards against public and private actors;¹³³ and to cooperate with other states to prevent, reduce and remedy transboundary and global environmental harm that interferes with human rights.¹³⁴ With regard to groups requiring particular attention, states are required to take additional measures to protect those who are most vulnerable or at risk from environmental harm¹³⁵ and to comply with all obligations towards indigenous peoples and traditional communities.¹³⁶ Finally, the Framework Principles affirm the obligation on states to respect, protect and fulfil human rights in all actions taken that aim to promote sustainable development and address environmental challenges.¹³⁷

In addition to setting out these important principles, it is useful to note that the Special Rapporteur’s report also emphasizes the importance of a human right to a healthy environment, and urges the Human Rights Council to support its recognition.¹³⁸

c. Right to a Healthy Environment: Good Practices (2019)

In 2019 the Special Rapporteur submitted a report outlining good practices that relate specifically to the right to a healthy environment.¹³⁹ The identified procedural and substantive elements in the report are an important contribution to delineating the content to the right, and many of the substantive elements have been elaborated on in the Special Rapporteur’s various thematic reports. Many of these elements are also consistent with the content of the Framework Principles set out by the former Special Rapporteur. The procedural elements of the right to a healthy environment identified by the Special Rapporteur are:

- Access to environmental information¹⁴⁰
- Public participation in environmental decision-making¹⁴¹

130 Ibid, principle 9.

131 Ibid, principle 10.

132 Ibid, principle 11.

133 Ibid, principle 12.

134 Ibid, principle 13.

135 Ibid, principle 14.

136 Ibid, principle 15.

137 Ibid, principle 16.

138 Human Rights Council, [UN doc A/HRC/37/59](#), supra fn 119, §§11-16.

139 Human Rights Council, [Report of the Special Rapporteur on Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Right to a Healthy Environment—Good Practices](#), Un doc A/HRC/43/53, 30 December 2019.

140 Ibid, §§14-21.

141 Ibid, §§22-29.

- Access to justice¹⁴²

The substantive elements of the right to a healthy environment are:

- Clean air¹⁴³
- A safe climate¹⁴⁴
- Healthy and sustainably produced food¹⁴⁵
- Access to safe water and adequate sanitation¹⁴⁶
- Non-toxic environments in which to live, work and play¹⁴⁷
- Healthy ecosystems and biodiversity¹⁴⁸

In a report to the General Assembly, the former Special Rapporteur affirmed that the content of the right to a healthy environment has been developed over decades, particularly through national and regional norms and jurisprudence:

‘As the extensive reports of the Special Rapporteur forcefully demonstrate, the human right to a healthy environment is not an empty vessel waiting to be filled; on the contrary, its content has already been exhaustively discussed, debated, defined and clarified over the past 45 years.’¹⁴⁹

Read with the obligations identified in the earlier compilation of good practices and the state obligations set out in the Framework Principles, the abovementioned

¹⁴² Ibid, §§30-37.

¹⁴³ Ibid, §§38-47. On clean air, see Human Rights Council, [Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Clean Air](#), UN doc A/HRC/40/55, 8 January 2019.

¹⁴⁴ [Report of the Special Rapporteur, Un doc A/HRC/43/53](#), supra fn 139, §§48-72. On a safe climate, see Human Rights Council, [Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Safe Climate](#), UN doc A/74/161, 15 July 2019.

¹⁴⁵ [Report of the Special Rapporteur, Un doc A/HRC/43/53](#), supra fn 139, §§73-79. On healthy and sustainable food, see UNGA, [Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Healthy and Sustainable Food—Reducing the Environmental Impacts of Food Systems on Human Rights](#), UN doc A/76/179, 19 July 2021.

¹⁴⁶ [Report of the Special Rapporteur, Un doc A/HRC/43/53](#), supra fn 139, §§80-89. On the global water crisis, see Human Rights Council, [Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Human Rights and the Global Water Crisis—Water Pollution, Water Scarcity and Water-Related Disasters](#), UN doc A/HRC/46/28, 19 January 2021.

¹⁴⁷ [Report of the Special Rapporteur, Un doc A/HRC/43/53](#), supra fn 139, §§90-102. On non-toxic environments, see Human Rights Council, [Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: The Right to a Clean, Healthy and Sustainable Environment—Non-Toxic Environment](#), UN doc A/HRC/49/53, 12 January 2022.

¹⁴⁸ [Report of the Special Rapporteur, Un doc A/HRC/43/53](#), supra fn 139, §§103-112. On biodiversity, see Human Rights Council, [Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Biodiversity Report](#), UN Doc A/HRC/34/49, 19 January 2017.

¹⁴⁹ UNGA, [UN doc A/73/188](#), supra fn 108, §38.

procedural and substantive elements provide a framework for what the right to a healthy environment entails. The right will undoubtedly require further delineation and clarification in future. While the parameters of the right are not static and will likely undergo further development, these elements can be considered the baseline for the scope and content of the right to a healthy environment.

B. RECOGNITION OF THE RIGHT TO A HEALTHY ENVIRONMENT BY THE HUMAN RIGHTS COUNCIL AND THE GENERAL ASSEMBLY

On 8 October 2021 the Human Rights Council adopted a resolution recognizing the right to a clean, healthy and sustainable environment (Human Rights Council resolution 48/13).¹⁵⁰ Similarly, in July 2022 the General Assembly adopted a resolution recognizing the right (General Assembly resolution 76/300).¹⁵¹ This section will consider the contents of these resolutions as well as the potential value and implications of the recognition of the right to a clean, healthy and sustainable environment.

The preamble to Human Rights Council resolution 48/13 recalls the Rio Declaration on Environment and Development, the Sustainable Development Goals, and the Human Rights Council’s earlier resolutions on human rights and the environment, as well as the Guiding Principles of Business and Human Rights and the reports of the Special Rapporteur. The resolution recognizes the role of sustainable development in realizing human rights, and the impact of environmental degradation, climate change and unsustainable development on the enjoyment of all human rights. It reaffirms states’ human rights obligations related to the environment, as reflected in international instruments and the Special Rapporteur’s framework principles.¹⁵²

In resolution 48/13 the Human Rights Council recognizes ‘the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights’.¹⁵³ It also notes that this right ‘is related to other rights and existing international law’.¹⁵⁴ Finally, it encourages states to take action in order to give effect to this right, including:

- Building capacities for environmental protection and enhancing cooperation on the implementation of the right;¹⁵⁵
- Sharing good practices related to the fulfilment of these obligations, in-

¹⁵⁰ [Human Rights Council, The Human Right to a Clean, Healthy and Sustainable Environment](#), UN doc A/HRC/RES/48/13, 18 October 2021.

¹⁵¹ UNGA, [Res 76/300](#), 28 July 2022.

¹⁵² [Human Rights Council, UN doc A/HRC/RES/48/13](#), supra fn 150, preamble.

¹⁵³ Ibid, §1.

¹⁵⁴ Ibid, §2.

¹⁵⁵ Ibid, §3(a).

cluding through exchanging knowledge and ideas, and building synergies between human rights protection and environmental protection;¹⁵⁶

- Adopting policies for the enjoyment of the right;¹⁵⁷
- Taking human rights obligations related to the right into account when implementing the Sustainable Development Goals.¹⁵⁸

The resolution also invites the General Assembly ‘to consider the matter’,¹⁵⁹ and in July 2022 the General Assembly did just that.

General Assembly resolution 76/300 recognizes the right to a clean, healthy and sustainable environment as a human right.¹⁶⁰ The content of the preamble and resolution itself is very similar to that of Human Rights Council resolution 48/13. The preamble of General Assembly resolution 76/300 differs from the Human Rights Council resolution through the explicit reference to poverty eradication as ‘an indispensable requirement for sustainable development’; the elaboration on the role of international cooperation; and the recognition of the importance of gender equality and gender responsive action in the context of climate change and environmental degradation.¹⁶¹

The body of the resolution is largely consistent with the wording and content of the Human Rights Council resolution. It also recognizes the right ‘to a clean, healthy and sustainable environment as a human right’.¹⁶² It notes that this right is ‘related to other rights and existing international law’ and affirms that the promotion of this right requires ‘the full implementation of the multilateral environmental agreements under the principles of international environmental law’.¹⁶³

Where Human Rights Council resolution 48/13 encourages states to take specific forms of action to give effect to this right, General Assembly resolution 76/300 contains a shorter paragraph that calls upon ‘international organizations, business enterprises and other relevant stakeholders’ as well as states 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’.¹⁶⁴

These resolutions recognizing the right to a clean, healthy and sustainable environment are historic milestones for human rights and the environment. While

¹⁵⁶ Ibid, §3(b).

¹⁵⁷ Ibid, §3(c).

¹⁵⁸ Ibid, §3(d).

¹⁵⁹ Ibid, §4.

¹⁶⁰ UNGA, Res 76/300, supra fn 151, §1.

¹⁶¹ Ibid, preamble.

¹⁶² Ibid, §1.

¹⁶³ Ibid, §2-3.

¹⁶⁴ Ibid, §4.

many existing human rights can be interpreted and applied so as to incorporate environmental dimensions, there are particular advantages to recognizing a distinct right to a healthy environment. The right to a healthy environment therefore has added value beyond that which is already provided by the rights in the ICCPR and ICESCR.

In a report to the General Assembly in 2018, the former Special Rapporteur set out the potential benefits of recognizing the right to a healthy environment in an international instrument.¹⁶⁵ The Special Rapporteur maintained that such recognition would highlight the importance of environmental protection for the realization of all human rights and underscore the interrelationship between human rights and the environment.¹⁶⁶ It would also aid the ‘coherent, consistent and integrated’ development of human rights norms related to the environment and ‘complement, reinforce and amplify’ national and regional norms in this area.¹⁶⁷ The Special Rapporteur noted that the experience of national jurisdictions with a constitutional environmental right confirms that recognition of this right has a number of important advantages, including: raising the ‘profile and importance of environmental protection’; providing a basis for stronger environmental laws and regulation; and providing a fundamental principle that can shape, strengthen and unify environmental law.¹⁶⁸

Through judicial enforcement, the right to a healthy environment can address gaps in environmental legislation, provide better access to justice in environmental matters, and can help prevent related human rights violations.¹⁶⁹ Another important contribution is the empowerment of the public through the procedural dimensions of the right.¹⁷⁰ These procedural dimensions provide individuals and organizations critical access to administrative, legislative, and judicial processes that they otherwise may have been excluded from.¹⁷¹ Recognizing the right to a healthy environment can also spur action related to environmental education, including the training and education of judges and other officials on the implementation and enforcement of relevant environmental laws.¹⁷²

The Special Rapporteur also affirmed that these advantages of recognizing the right to a healthy environment have, in many jurisdictions, translated into tangible benefits in the form of ‘healthier people and healthier ecosystems’.¹⁷³ The Special Rapporteur concluded that:

¹⁶⁵ UNGA, UN doc A/73/188, supra fn 108.

¹⁶⁶ Ibid, §39.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid, §40.

¹⁶⁹ Ibid, §41.

¹⁷⁰ Ibid, §42.

¹⁷¹ Ibid.

¹⁷² Ibid, §43.

¹⁷³ Ibid, §44.

[A]s a result of the legal recognition of their right to a healthy environment, many millions of people are breathing cleaner air, have gained access to safe drinking water, have reduced their exposure to toxic substances and are living in healthier ecosystems.¹⁷⁴

The advantages of a right to a healthy environment are particularly important for vulnerable populations who are most affected by climate change and environmental degradation. Such a right necessitates a minimum level of environmental quality and requires states to ensure that particular attention is given to those groups who bear a disproportionate share of environmental benefits and harms.¹⁷⁵ However, recognition of the right to a healthy environment does not guarantee fulfilment of that right in practice. The Special Rapporteur acknowledged that a clear tangible benefit from such a right will be less evident ‘in nations facing severe challenges with the rule of law or extreme poverty’.¹⁷⁶

The Special Rapporteur concluded that recognition of the right to a safe, clean, healthy and sustainable environment by the United Nations would result in the following:

- A clear acknowledgment that ‘the right to a healthy environment must be universally protected’;
- An impetus for inclusion of the right within more national constitutions and legislation, thereby potentially providing increased accountability for environmental harm;
- Additional reporting requirements, such as under the universal periodic review, that would in turn ‘raise the profile of this issue’; and
- Support and advancement of UNEP’s environmental rights initiative.¹⁷⁷

Although the resolutions of the Human Rights Council and General Assembly are not directly binding, a number of these positive results are still relevant. For example, Human Rights Council resolution 48/13 highlights the interrelationship between human rights and the environment, provides an impetus for national laws to incorporate the right, and supports and advances UNEP’s environmental rights initiative.

Commentators have affirmed the value and benefits of the recognition of the right to a healthy environment. Despite these resolutions not being explicitly binding, many agree such a resolution ‘nevertheless holds significant potential’.¹⁷⁸ The recognition promotes the prioritization of the right by governments, and can be seen as a catalyst for action to respect, protect and fulfil the right, including through ‘mobilising resources and political will’.¹⁷⁹

174 Ibid.

175 Ibid, §45.

176 Ibid.

177 Ibid, §49.

178 K. Buse, S. Gruskin, ‘The right to a healthy environment: Making it matter’, 375: n3076 *BMJ* (2021) 1.

179 CIEL, ‘Historic Recognition of a New Human Right and Response to Climate Harm’, 8 October 2021.

The resolution may also lead to recognition of the right to a healthy environment in other fora. With reference to the Human Rights Council resolution, Savaresi has noted that it could ‘bolster efforts’ for the formal recognition of the right by other bodies including ‘by the Council of Europe and by those states that do yet not explicitly provide this right in their domestic legal order’.¹⁸⁰ It may also ‘embolden progressive judges in the adjudication of environmental disputes’ by providing them with an additional authoritative source to rely on.¹⁸¹ Such judges could be influenced by the recognition of the right in their interpretation and application of national laws.

The Human Rights Council and General Assembly resolutions also provide individuals and civil society organizations with an additional tool with which to challenge governments and businesses for their failures to address or prevent environmental harm.¹⁸² This is particularly important for those whose domestic laws do not have such a right.

The recognition of the right to a healthy environment can also be seen as a positive sign of ‘increased awareness of the need to better incorporate human rights considerations into environmental law and policy-making’.¹⁸³ It has additional value in spurring further government action and related legislation for environmental protection.¹⁸⁴

The recognition of the right could also facilitate greater integration and harmonization between human rights law and international environmental law. In this regard, Cima argues that the recognition of the right to a healthy environment could ‘trigger a paradigm shift in the international human rights regime’.¹⁸⁵ This paradigm shift would involve the ‘reconceptualization’ of human rights law in accordance with environmental principles, including the principles of intergenerational equity, common concern, and prevention.¹⁸⁶ Cima suggests that this reconceptualization would incorporate the collective dimension of the right;¹⁸⁷ provide a mechanism for addressing global environmental harm;¹⁸⁸ and introduce a preventive approach to human rights law.¹⁸⁹

180 A. Savaresi, ‘The UN HRC recognizes the right to a healthy environment and appoints a new Special Rapporteur on Human Rights and Climate Change. What does it all mean?’, *EJIL:Talk! Blog of the European Journal of International Law*, 12 October 2021.

181 Ibid.

182 Ibid; K. Buse, S. Gruskin, ‘The right to a healthy environment: Making it matter’, 375: n3076 *BMJ* (2021) 1.

183 A. Savaresi, ‘The UN HRC recognizes the right to a healthy environment and appoints a new Special Rapporteur on Human Rights and Climate Change. What does it all mean?’, *EJIL:Talk! Blog of the European Journal of International Law*, 12 October 2021.

184 K. Buse, S. Gruskin, ‘The right to a healthy environment: Making it matter’, 375: n3076 *BMJ* (2021) 1.

185 E. Cima, ‘The right to a healthy environment: Reconceptualizing human rights in the face of climate change’, *RECIEL* (2022) 8.

186 Ibid, p 11.

187 Ibid, pp 9-10.

188 Ibid, pp 10-11.

189 Ibid, p 11.

In conclusion, there is much potential in the recognition of the right to a clean, healthy and sustainable environment. Making use of these advantages requires action to be taken in various contexts. As noted by the former UN High Commissioner for Human Rights, Michelle Bachelet:

'Bold 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'.¹⁹⁰

¹⁹⁰ OHCHR, 'Bachelet hails landmark recognition that having a healthy environment is a human right', 8 October 2021.

4. THE ENVIRONMENTAL DIMENSIONS OF RESOLUTIONS FROM THE HUMAN RIGHTS COUNCIL AND THE GENERAL ASSEMBLY

Following the recognition of the right to a clean, healthy and sustainable environment, the right will need to be included within relevant future resolutions of the Human Rights Council and the General Assembly. This section examines resolutions of the Human Rights Council and the General Assembly with a view to identifying the links between the environment and human rights in recent resolutions, and proposing how such resolutions can incorporate the right, or elements thereof, in future.

This will be done by examining resolutions which are primarily concerned with the environment as well as those resolutions which are related to the environment or have environmental dimensions. The discussion will include general recommendations for how each of these two bodies could strengthen the links between human rights and the environment and include the right to a clean, healthy and sustainable environment in future resolutions.

A. HUMAN RIGHTS COUNCIL RESOLUTIONS

1. HUMAN RIGHTS COUNCIL RESOLUTIONS ABOUT THE ENVIRONMENT

There are a number of Human Rights Council resolutions that have dealt with issue of human rights and the environment. Commentators such as Marc Limon have provided a background and history of these, including relevant resolutions of the Human Rights Council's predecessor – the Commission on Human Rights.¹⁹¹ This section will focus on those thematic resolutions that directly consider human rights and the environment, as well as a few examples of related thematic resolutions that refer to the environment and human rights.

Since 2011 the Human Rights Council has regularly made resolutions that explicitly address human rights and the environment (and that are titled accordingly).

¹⁹¹ See M. Limon 'The politics of human rights, the environment, and climate change at the Human Rights Council' in J. Knox and R. Pejan (eds) *The Human Right to a Healthy Environment*, Cambridge University Press, 2018, pp 190-195. For additional commentary on Human Rights Council resolutions related to the environment, see also E. Cameron and M. Limon 'Restoring the Climate by Realizing Rights: The Role of the International Human Rights System' 21 *RECIEL* (2012) p 207-209; UN Environment Programme, *Climate Change and Human Rights*, 2015, pp 13-14.

Human Rights Council resolution 16/11 requests the OHCHR to conduct a detailed study on the relationship between human rights and the environment. Following the completion of this study, resolution 19/10 established the mandate of an independent expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment for a period of three years. Following the initial reports from the independent expert, resolution 25/21 recognized certain procedural rights relevant for ‘the enjoyment of a safe, clean, healthy and sustainable environment’.¹⁹² The resolution also reaffirmed non-discrimination in the context of environmental matters,¹⁹³ and recognized the role of human rights defenders.¹⁹⁴ Significantly, the resolution recognized the need to ‘clarify further the scope of human rights obligations of states as they relate to environmental harm’.¹⁹⁵

Human Rights Council resolution 28/11 extended the mandate of the independent expert as a ‘special rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’ for three years, to continue to study these human rights obligations, good practices, and related obstacles and challenges. The resolution also requests that the OHCHR collaborate with UNEP to exchange knowledge on human rights and the environment.¹⁹⁶

Resolution 31/8 welcomed work done by the Special Rapporteur, the OHCHR and UNEP on the issue of human rights and the environment. The resolution called on states to, inter alia, adopt and implement laws ensuring procedural rights,¹⁹⁷ facilitate public participation in environmental decision-making,¹⁹⁸ and provide for effective remedies for environment-related human rights violations and abuses.¹⁹⁹ Resolution 34/20 calls on states to respect, protect and fulfil human rights ‘in all actions undertaken to address environmental challenges’,²⁰⁰ to regulate the activities of public and private actors that cause environmental harm,²⁰¹ and it echoes the contents of resolution 31/8 in many respects.

The mandate of the Special Rapporteur was renewed for another three years in resolution 37/8. The scope of the mandate remained largely the same as the mandate

¹⁹² [Human Rights Council, Human Rights and the Environment](#), UN doc A/HRC/RES/25/21, 15 April 2014, §4.

¹⁹³ *Ibid.*, §6.

¹⁹⁴ *Ibid.*, §9.

¹⁹⁵ *Ibid.*, §12.

¹⁹⁶ [Human Rights Council, Human Rights and the Environment](#), UN doc A/HRC/RES/28/11, 7 April 2015, §9.

¹⁹⁷ [Human Rights Council, Human Rights and the Environment](#), UN doc A/HRC/RES/31/8, 22 April, 2016, §4(b).

¹⁹⁸ *Ibid.*, §4(c).

¹⁹⁹ *Ibid.*, §4(f).

²⁰⁰ [Human Rights Council, Human Rights and the Environment](#), UN doc A/HRC/RES/34/20, 6 April 2017, §5(a).

²⁰¹ *Ibid.*, §5(g).

under resolution 28/11, with the only notable change being that express provision is made for the conduct of country visits.²⁰² Human Rights Council resolution 46/7 once again renewed the mandate of the Special Rapporteur for three years with no substantive change to the scope of the mandate. In keeping with earlier resolutions, the Special Rapporteur is requested to convene an expert seminar – in this instance the topic is ‘the role of human rights and environmental conservation in the prevention of future pandemics’.²⁰³ The resolution also calls upon states to ‘conserve, protect and restore healthy ecosystems and biodiversity and to ensure their sustainable management and use’ through a human rights-based approach, and to take other actions related to the protection of ecosystems and biodiversity.²⁰⁴

In addition to the abovementioned resolutions on human rights and the environment, the Human Rights Council has made a series of resolutions that address the relationship between human rights and climate change. These resolutions request the OHCHR to study and consider climate change and human rights, and encourage relevant special procedures mandate holders to consider climate change within their mandates. There are also calls upon states to enhance international assistance and cooperation, to consider human rights within the framework of the UNFCCC, and to adopt a human rights-based approach to climate mitigation and adaptation.²⁰⁵ In resolution 48/14 the Human Rights Council decided to appoint ‘a special rapporteur on the promotion and protection of human rights in the context of climate change’.²⁰⁶ The mandate includes, inter alia, studying the effects of climate change and how these can be addressed;²⁰⁷ identifying challenges in this regard;²⁰⁸ identifying good practices on the integration of human rights in climate change policies;²⁰⁹ raising awareness on the effect on climate change on human rights;²¹⁰ and facilitating international assistance and cooperation.²¹¹

²⁰² [Human Rights Council, Human Rights and the Environment](#), UN doc A/HRC/RES/37/8, 9 April 2018, §7(g).

²⁰³ [Human Rights Council, Human Rights and the Environment](#), UN doc A/HRC/RES/46/7, 30 March 2021, §9(a).

²⁰⁴ *Ibid.*, §§12-15.

²⁰⁵ See [Human Rights Council, Human Rights and Climate Change](#), UN doc A/HRC/RES/7/23, 28 March 2008; [Human Rights Council, Human Rights and Climate Change](#), UN doc A/HRC/RES/10/4, 25 March 2009; [Human Rights Council, Human Rights and Climate Change](#), UN doc A/HRC/RES/18/22, 17 October 2011; [Human Rights Council, Human Rights and Climate Change](#), UN doc A/HRC/RES/26/27, 15 July 2014; [Human Rights Council, Human Rights and Climate Change](#), UN doc A/HRC/RES/29/15, 22 July 2015; [Human Rights Council, Human Rights and Climate Change](#), UN doc A/HRC/RES/32/33, 18 July 2016; [Human Rights Council, Human Rights and Climate Change](#), UN doc A/HRC/RES/35/20, 7 July 2017; [Human Rights Council, Human Rights and Climate Change](#), UN doc A/HRC/RES/38/4, 16 July 2018; [Human Rights Council, Human Rights and Climate Change](#), UN doc A/HRC/RES/41/21, 23 July 2019; [Human Rights Council, Human Rights and Climate Change](#), UN doc A/HRC/RES/44/7, 23 July 2020; [Human Rights Council, Human Rights and Climate Change](#), UN doc A/HRC/RES/47/24, 26 July 2021; [Human Rights Council, Mandate of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change](#), UN doc A/HRC/RES/48/14, 13 October 2021.

²⁰⁶ [Human Rights Council, UN doc A/HRC/RES/48/14](#), *supra* fn 205, §2.

²⁰⁷ *Ibid.*, §2(a).

²⁰⁸ *Ibid.*, §2(b).

²⁰⁹ *Ibid.*, §2(c).

²¹⁰ *Ibid.*, §2(e).

²¹¹ *Ibid.*, §2(g).

The most recent resolution on human rights and climate change²¹² expresses concern regarding the contribution of climate change to ‘the increased frequency and intensity of both sudden-onset natural disasters and slow-onset events’ and their adverse effect on human rights.²¹³ The resolution emphasizes the importance of addressing the effects of climate change,²¹⁴ and calls on states to consider human rights within the framework of the UNFCCC.²¹⁵ The resolution recognizes the importance of ‘averting, minimizing and addressing loss and damage associated with the adverse effects of climate change’²¹⁶ and calls on states to adopt a comprehensive and inclusive approach to mitigation and adaptation policies in order to address ‘the economic, cultural and social impact and human rights challenges’ of climate change.²¹⁷ The resolution also calls upon states ‘to better promote the human rights of people in vulnerable situations’²¹⁸ and to ‘develop, strengthen and implement policies’ for their protection and their inclusion in climate action.²¹⁹ States are urged to enhance international cooperation to realize the right to food including by ‘supporting sustainable agriculture and aquatic food production from the oceans’.²²⁰ The resolution reaffirms the Human Rights Council’s ‘commitment to advocate for combating climate change and addressing its adverse impact on the full and effective enjoyment of human rights’, recognizing the importance of climate action in its work.²²¹

Other Human Rights Council resolutions also have direct relevance for the environment, such as resolution 45/30, which concerns ‘realizing the rights of the child through a healthy environment’. The resolution acknowledges ‘the vital importance of ensuring that every child of present and future generations can enjoy an environment adequate to their health and well-being’ and the need for prevention of environmental harm.²²² States are urged to protect children from such environmental harm through various measures, including considering the best interests of the child in environmental decision-making;²²³ taking precautionary action in response to threats of serious harm;²²⁴ and considering ‘recognizing the right to a healthy environment in national legislation’.²²⁵ The resolution also urges states

212 [Human Rights Council, Human Rights and Climate Change](#), UN doc A/HRC/RES/50/9.

213 *Ibid.*, §1.

214 *Ibid.*, §2.

215 *Ibid.*, §3.

216 *Ibid.*, §6.

217 *Ibid.*, §7.

218 *Ibid.*, §9.

219 *Ibid.*, §10.

220 *Ibid.*, §11.

221 *Ibid.*, §12.

222 [Human Rights Council, Rights of the Child: Realizing the Rights of the Child through a Healthy Environment](#), UN doc A/HRC/RES/45/30, 13 October 2020, §3.

223 *Ibid.*, §4(a).

224 *Ibid.*, §4(b).

225 *Ibid.*, §4(c).

to ensure the enjoyment of the right to health by, inter alia, addressing environmental determinants and contributing environmental factors related to health.²²⁶ Resolution 45/30 addresses inequity in exposure to environmental harm, access to justice,²²⁷ and urges states to take measures for the ‘inclusive and meaningful’ participation of children in environmental decision-making.²²⁸ The role of business activities in environmental harm is also recognized, with the resolution calling on states to take measures to prevent related rights abuses,²²⁹ and calling on businesses to meet their responsibility to respect children’s rights.²³⁰ With regard to climate change, states are called upon to develop ‘ambitious mitigation measures’ to minimise impacts on children ‘to the greatest extent possible’.²³¹

RECOMMENDATIONS FOR FUTURE RESOLUTIONS

Future Human Rights Council resolutions concerning the environment will need to reaffirm and reiterate the right to a clean, healthy and sustainable environment. The Human Rights Council will also need to build on the recognition of the right by recognizing its accepted content and scope of application. This should be consistent with the content and scope of the right as established in international law.

One way to acknowledge the content of the right could be through relying on the Framework Principles as reflective of the content of the right to a clean, healthy and sustainable environment. Although the Human Rights Council has made reference to the Framework Principles,²³² a stronger endorsement or affirmation of the principles as containing the elements of the right could contribute to the mainstreaming of the right. Specific principles could also be referred to wherever relevant, whether explicitly or through the use of language from the principles.

Where future resolutions address thematic areas that fall within the scope of the right to a clean, healthy and sustainable environment, as delineated by the Special Rapporteur and discussed above, these resolutions could recognize that element or component of the right. For example, a resolution concerning the protection of the climate could contain a recognition that ‘a safe climate’ is considered part of the right recognized in Human Rights Council resolution 48/13. Where the Special Rapporteur has published a thematic report on the relevant area, this could also be taken note of.

226 *Ibid.*, §5.

227 *Ibid.*, §7.

228 *Ibid.*, §9.

229 *Ibid.*, §10.

230 *Ibid.*, §11.

231 *Ibid.*, §14.

232 In [Human Rights Council, UN doc A/HRC/RES/37/8](#), supra fn 202, the Human Rights Council mentions the Framework Principles in the preamble, and in §3 it ‘takes note with appreciation’ the report on the Framework Principles.

2. HUMAN RIGHTS COUNCIL RESOLUTIONS RELATED TO THE ENVIRONMENT

This section will discuss recent Human Rights Council resolutions that are related to the environment and either have implications *for* the environment, or are influenced *by* the environment. The environment is relevant for various resolutions, including those related to the rights to water and sanitation, the right to food, the right to adequate housing, hazardous substances and wastes, indigenous peoples' rights, business and human rights, as well as human rights defenders. The discussion is largely limited to resolutions from 2020 onwards, covering resolutions from the Human Rights Council's 43rd to 51st sessions. Following a discussion of the environment-related content of each of these resolutions, some recommendations are made for the possible incorporation of the right to a healthy environment in future resolutions.

a. Right to Food

Human Rights Council resolutions on the right to food recognize the interrelationship between food and the environment, and often contain references to the environment, sustainable development, and climate change. As noted above, healthy and sustainable food is a core component of the right to a healthy environment. Recent resolutions on the right to food are resolutions 43/11 and 46/19. The preambles of both resolutions recognize the importance of sustainable agriculture and sustainable food production and consumption. The preambles also clearly recognize the environmental contributors to food insecurity, including environmental degradation, desertification, climate change and natural disasters. In addition, they recognize the importance of agrobiodiversity for food security and the realization of the right to food. Both preambles call for particular urgent assistance for those countries most affected by 'drought, plague, starvation and famine-related threats'.²³³

Environment-related provisions are also found in the body of these two resolutions. Both resolutions stress the importance of promoting investment in irrigation and water management 'in order to reduce vulnerability to droughts' and 'tackle water scarcity'.²³⁴ Resolution 46/19 contains an additional reference to ensuring 'the preservation and sustainable use of ecosystems'.²³⁵ Both resolutions recognize the role of small-scale farmers and peasants in 'preserving ecosystems', as well as the need to assist their development.²³⁶ Finally, both of these resolutions on the right to food recognize the importance of 'traditional sustainable agricultural practices', including traditional seed supply systems.²³⁷

²³³ Human Rights Council, *The right to food*, UN doc A/HRC/RES/43/11, 1 July 2020, preamble; Human Rights Council, *The right to food*, UN doc A/HRC/RES/46/19, 1 April 2021, preamble. In this regard, resolution 43/11 refers to 'certain African countries', while resolution 46/19 refers to 'countries that are disproportionately affected by climate change'.

²³⁴ Human Rights Council, UN doc A/HRC/RES/43/11, supra fn 233, §8; Human Rights Council, UN doc A/HRC/RES/46/19, supra fn 233, §12.

²³⁵ Human Rights Council, UN doc A/HRC/RES/46/19, supra fn 233, §12.

²³⁶ Human Rights Council, UN doc A/HRC/RES/43/11, supra fn 233, §9; Human Rights Council, UN doc A/HRC/RES/46/19, supra fn 233, §13.

²³⁷ Human Rights Council, UN doc A/HRC/RES/43/11, supra fn 233, §13; Human Rights Council, UN doc A/HRC/RES/46/19, supra fn 233, §17.

b. Rights to Water and Sanitation

The rights to safe and clean drinking water and sanitation are derived from the right to an adequate standard of living, and were first recognized by the General Assembly in resolution 64/292 of 28 July 2010. Access to safe water and adequate sanitation is also an element of the right to a healthy environment. In some ways, all aspects of the promotion of the rights to water and sanitation could be understood as advancing the right to a healthy environment. However, this section will focus on the environmental dimensions of these rights in the work of the Human Rights Council.

The most recent resolutions in this thematic area are resolution 45/8 and resolution 51/19.²³⁸ The preambles of both resolutions contain references to SDG 6 and the 'sustainable management of water and sanitation for all'. The preambles also recognize that the consequences of climate change and environmental degradation are felt most by those already vulnerable and marginalized, including indigenous peoples as well as 'people facing desertification, land degradation, drought and water scarcity, and rising water levels due to storm surges, sea level rise and flooding'. The preamble of resolution 51/19 notes that effective climate solutions require funding and participation, and that the realization of the rights to water and sanitation 'is strongly linked to the health and sustainability of the aquatic ecosystems on which [those living in situations of marginalization or vulnerability] depend'. The preamble also recognizes the role played by environmental human rights defenders in promoting and protecting these rights. Significantly, the preamble to resolution 51/19 recalls all resolutions from the Human Rights Council related to climate change and the environment, making specific reference resolution 48/13 as well as General Assembly resolution 76/300, thereby affirming the link between the rights to water and sanitation and the right to a clean, healthy and sustainable environment.

The body of resolution 45/8 does not contain references to the environment or climate change, but it does reiterate the need for water and sanitation systems that are sustainable and sustainably managed.²³⁹ Resolution 51/19 calls upon states to enhance efforts to reduce the release of untreated wastewater into the environment and to take the need for appropriate wastewater treatment systems into account in plans and programmes 'with the aim of reducing the risks to human health, drinking water resources and the environment'.²⁴⁰ The resolution also calls on states to 'recognize the need for and implement integrated water resources management to ensure sustainable and equitable use of water and the protection of ecosystems'.²⁴¹

²³⁸ Human Rights Council, *The Human Rights to Safe Drinking Water and Sanitation*, UN doc A/HRC/RES/45/8, 9 October 2020; Human Rights Council, *The Human Rights to Safe Drinking Water and Sanitation*, UN doc A/HRC/RES/51/19.

²³⁹ Human Rights Council, UN doc A/HRC/RES/45/8, supra fn 238, §§7(a) and (j).

²⁴⁰ Human Rights Council, UN doc A/HRC/RES/51/19, supra fn 238, §2(j).

²⁴¹ Ibid, §2(l).

c. Right to Adequate Housing

Climate change and environmental risks have far-reaching implications for the right to adequate housing. The two most recent resolutions on the right to adequate housing from the Human Rights Council both recognize the impact of climate change on this right.²⁴² Increased emphasis on climate change is evident in the differences between resolutions 43/14 and 49/17.

Both preambles express ‘deep concern’ regarding natural disasters and their impact on the right to adequate housing. The earlier resolution simply refers to the ‘number and scale of natural disasters’, whereas resolution 49/17 expands on this substantially and clearly identifies climate change as the cause for these disasters as well as recognizing the additional impacts of slow-onset events.²⁴³ Resolution 49/17 also recalls the need to ‘accelerate action on mitigation, enhance adaptive capacity, strengthen resilience and reduce vulnerability to climate change’.²⁴⁴ Both preambles emphasize that the effects of climate change negatively impact the enjoyment of the right to adequate housing.²⁴⁵ The preamble of resolution 49/17 goes on to recognize that these climate-related effects are ‘felt most acutely by those that are already in vulnerable situations or are most sensitive to impacts of climate change’.²⁴⁶

In the body of these resolutions, the Human Rights Council calls on states to take the right to adequate housing into account ‘in strategies for adaptation to and mitigation of climate change’.²⁴⁷ They also call on states to work with those affected in developing and promoting ‘environmentally sustainable and sound housing design, construction and maintenance to address the effects of climate change’.²⁴⁸ Finally, resolution 49/17 also calls on states to enhance international cooperation and assistance for climate mitigation and adaptation ‘to assist especially those countries that are particularly vulnerable to the adverse effects of climate change’.²⁴⁹

d. Hazardous Substances and Wastes

Hazardous substances and wastes have wide-ranging impacts on the environment and on human rights. The Human Rights Council has established the mandate of

²⁴² Human Rights Council, *Adequate Housing as a Component of the Right to an Adequate Standard of Living, and the Right to Non-Discrimination in this Context*, UN doc A/HRC/RES/43/14, 6 July 2020; Human Rights Council, *Adequate Housing as a Component of the Right to an Adequate Standard of Living, and the Right to Non-Discrimination in this Context*, UN doc A/HRC/RES/49/17, 13 April 2022.

²⁴³ Human Rights Council, UN doc A/HRC/RES/49/17, *supra* fn 242, preamble.

²⁴⁴ *Ibid.*

²⁴⁵ Human Rights Council, UN doc A/HRC/RES/43/14, *supra* fn 242; Human Rights Council, UN doc A/HRC/RES/49/17, *supra* fn 242.

²⁴⁶ Human Rights Council, UN doc A/HRC/RES/49/17, *supra* fn 242, preamble.

²⁴⁷ Human Rights Council, UN doc A/HRC/RES/43/14, *supra* fn 242, §1(d); Human Rights Council, UN doc A/HRC/RES/49/17, *supra* fn 242, §1(d).

²⁴⁸ Human Rights Council, UN doc A/HRC/RES/43/14, *supra* fn 242, §1(e); Human Rights Council, UN doc A/HRC/RES/49/17, *supra* fn 242, §1(e).

²⁴⁹ Human Rights Council, UN doc A/HRC/RES/49/17, *supra* fn 242, §1(f).

the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.²⁵⁰ Previous resolutions on hazardous substances and wastes dealt with the adverse effects on human rights,²⁵¹ as well as the protection of the rights of workers exposed to such substances and wastes.²⁵²

The most recent resolution 45/17 extends the mandate of the Special Rapporteur. The preamble to the resolution affirms that the management of hazardous substances and wastes throughout their life cycle ‘may have an adverse impact on the full enjoyment of human rights’.²⁵³ The resolution welcomes the work carried out by the Special Rapporteur, including in relation to the rights of workers, the right to information, the right to food, and business activities.²⁵⁴ The Special Rapporteur is requested to continue to provide up-to-date information on human rights and hazardous substances and wastes, which may include information on: adverse consequences for vulnerable persons and groups;²⁵⁵ the risks to freedom of expression and the right to enjoy the benefits of scientific progress;²⁵⁶ developments, gaps and shortcomings in relevant regulatory mechanisms;²⁵⁷ and human rights issues relating to businesses.²⁵⁸

e. Indigenous Peoples’ Rights

The special relationship between indigenous peoples and the environment, as well as their role in protecting the environment, has been recognized by the Human Rights Council. Resolutions addressing the situation of indigenous peoples regularly refer to the environment and climate change. The most recent resolutions regarding indigenous peoples are resolution 45/12, resolution 48/11 and resolution 51/18. The preambles of these resolutions recognize that indigenous peoples ‘are among the first to face the direct consequences of climate change owing to their dependence upon and close relationship with the environment and

²⁵⁰ Initially called ‘the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights’ – see Human Rights Council, *Mandate of the Special Rapporteur on the Adverse Effects of the Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights*, UN doc A/HRC/RES/9/1, 5 September 2008.

²⁵¹ Human Rights Council, *The Adverse Effects of the Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights*, UN doc A/HRC/RES/12/18, 12 October 2009.

²⁵² Human Rights Council, *Protection of the Rights of Workers Exposed to Hazardous Substances and Wastes*, UN doc A/HRC/RES/42/21, 8 October 2019.

²⁵³ Human Rights Council, *Mandate of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes*, UN doc A/HRC/RES/45/17, 9 October 2020.

²⁵⁴ *Ibid.*, preamble.

²⁵⁵ *Ibid.*, §1(a).

²⁵⁶ *Ibid.*, §1(b).

²⁵⁷ *Ibid.*, §1(c).

²⁵⁸ *Ibid.*, §1(d).

its resources'.²⁵⁹ The preambles also welcome the role of indigenous peoples in achieving the objectives of the UNFCCC, the Paris Agreement, and the Sustainable Development Goals. Recognizing the impact of climate change on the way of life and rights of indigenous peoples, the preambles affirm that states should consider their obligations towards indigenous peoples 'when taking action to address climate change'.²⁶⁰ In this regard, states also need to 'strengthen the role of indigenous peoples' knowledge systems' when it comes to climate mitigation and adaptation.²⁶¹ The preamble of the most recent resolution also recognizes that ecosystems that indigenous peoples depend on 'are threatened by poor management and unsustainable development and face increased uncertainty and risks owing to climate change and other factors'.²⁶²

These resolutions urge states to support indigenous peoples' participation in UN processes regarding climate change and business and human rights.²⁶³ The resolutions also encourage states to 'work with indigenous peoples to strengthen technologies, practices and efforts related to addressing and responding to climate change'.²⁶⁴

f. Business and Human Rights

The thematic area of business and human rights is closely connected to the environment, as much environmental harm is caused by the activities of businesses, both domestic, foreign and transnational. The Human Rights Council established the 'Working Group on the issue of human rights and transnational corporations and other business enterprises, and improving accountability and access to remedy' in its resolution 17/4. Its most recent resolution on the mandate includes, in its preamble, recognition of the efforts of states to implement the UN Guiding Principles on Business and Human Rights.²⁶⁵ The preamble goes on to encourage businesses to carry out due diligence 'including with regard to human rights relating to the enjoyment of a safe, clean, healthy and sustainable environment'. Incorporating procedural environmental rights, the preamble also encourages businesses to conduct 'meaningful and inclusive consultations' with those affected by business activities.²⁶⁶

259 Human Rights Council, *Human Rights and Indigenous Peoples*, UN doc A/HRC/RES/45/12, 9 October 2020, preamble; Human Rights Council, *Human Rights and Indigenous Peoples*, UN doc A/HRC/RES/48/11, 15 October 2021, preamble; Human Rights Council, *Human Rights and Indigenous Peoples*, UN doc A/HRC/RES/51/18, 12 October 2022, preamble.

260 Ibid.

261 Ibid.

262 Human Rights Council, UN doc A/HRC/RES/51/18, supra fn 259, preamble.

263 Human Rights Council, UN doc A/HRC/RES/45/12, supra fn 259, §5; Human Rights Council, UN doc A/HRC/RES/48/11, supra fn 259, §5. Specifically, the resolutions urge states to contribute to the UN Voluntary Fund for Indigenous Peoples.

264 Human Rights Council, UN doc A/HRC/RES/45/12, supra fn 259, §26; Human Rights Council, UN doc A/HRC/RES/48/11, supra fn 259, §29; Human Rights Council, UN doc A/HRC/RES/51/18, supra fn 259, §25.

265 Human Rights Council, *Business and Human Rights: The Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, and Improving Accountability and Access to Remedy*, UN doc A/HRC/RES/44/15, 23 July 2020, preamble.

266 Ibid.

g. Human Rights Defenders

Environmental human rights defenders are at the forefront of environmental protection. While there are Human Rights Council resolutions addressing the situation of human rights defenders more broadly, the particular position of environmental human rights defenders was addressed in resolution 40/11 which concerns '[r]ecognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development'.²⁶⁷ The preamble to the resolution reaffirms that 'respect, support and protection' for human rights defenders is essential for the enjoyment of human rights 'and for the protection and conservation of the environment'. It also recognizes the role of human rights defenders in promoting and protecting human rights related to 'the enjoyment of a safe, clean, healthy and sustainable environment' and expresses concern that environmental human rights defenders are among those most at risk.²⁶⁸ The preamble recognizes that environmental harm is 'felt most acutely' by those in already vulnerable situations, including indigenous peoples and rural and local communities, and further recognizes the need for protection mechanisms for environmental human rights defenders.²⁶⁹

The resolution begins by expressing grave concern at the situation of environmental human rights defenders, strongly condemning human rights violations and abuses against them.²⁷⁰ The Human Rights Council stresses the need to ensure 'a safe and enabling environment' for human rights defenders to undertake their work.²⁷¹ It calls on states to: respect, protect and fulfil human rights in actions taken to address environmental challenges;²⁷² adopt and implement laws ensuring procedural environmental rights;²⁷³ facilitate public participation in environmental decision-making;²⁷⁴ provide effective remedies for violations and abuses 'including those relating to the enjoyment of a safe, clean, healthy and sustainable environment';²⁷⁵ provide remedies for human rights violations, including those related to the environment;²⁷⁶ regulate public and private actors 'in order to prevent, reduce and remedy harm to biodiversity';²⁷⁷ and take human rights obligations relating to the environment into account in the implementation and

267 Human Rights Council, *Recognizing the Contribution of Environmental Human Rights Defenders to the Enjoyment of Human Rights, Environmental Protection and Sustainable Development*, UN doc A/HRC/RES/40/11, 2 April 2019.

268 Ibid, preamble.

269 Ibid.

270 Ibid, §1.

271 Ibid, §2.

272 Ibid, §14(a).

273 Ibid, §14(b).

274 Ibid, §14(c).

275 Ibid, §14(f).

276 Ibid, §14(g).

277 Ibid, §14(h).

follow-up to the 2030 Agenda for Sustainable Development.²⁷⁸ The resolution encourages states to ensure the disclosure of information relating to ‘environmental, land, natural resources and development issues’.²⁷⁹ It also recognizes the role of human rights defenders in drawing attention to the benefits and risks of development projects and business operations, including those related to ‘natural resource exploitation, environmental, land and development issues’.²⁸⁰ States are called upon to encourage business enterprises to ‘carry out human rights due diligence, including with regard to human rights relating to the enjoyment of a safe, clean and healthy environment’.²⁸¹ The responsibility of businesses to respect the rights of environmental human rights defenders is also underscored.²⁸²

The most recent resolution of the Human Rights Council concerning human rights defenders does not explicitly address the position of environmental human rights defenders. Resolution 43/16 is a brief resolution concerning the mandate of the Special Rapporteur on the situation of human rights defenders.²⁸³ The preamble to the resolution emphasizes the role that individuals and civil society institutions play in the promotion and protection of human rights and expresses concern regarding the risks faced by human rights defenders.²⁸⁴ The preamble also stresses that ‘respect and support for the activities of all human rights defenders, including women human rights defenders, are essential to the overall enjoyment of human rights’.²⁸⁵ The resolution welcomes the work done by the Special Rapporteur and extends the mandate for another three years.²⁸⁶

RECOMMENDATIONS FOR FUTURE RESOLUTIONS

It is clear from the content of the abovementioned resolutions that thematic areas that are not explicitly connected to the environment still have significant environmental dimensions. The right to a clean, healthy and sustainable environment is therefore important for these resolutions. Future resolutions in such areas will have to consider how the right to a healthy environment can be appropriately incorporated.

In addition to reaffirming the right, future resolutions could make reference to specific elements of the right to a clean, healthy and sustainable environment. This is particularly relevant where the resolution concerns an identified element of the right.

²⁷⁸ *Ibid.*, §14(i).

²⁷⁹ *Ibid.*, §17.

²⁸⁰ *Ibid.*, §20.

²⁸¹ *Ibid.*, §21.

²⁸² *Ibid.*, §22.

²⁸³ [Human Rights Council, Mandate of the Special Rapporteur on the Situation of Human Rights Defenders](#), UN doc A/HRC/RES/43/16, 6 July 2020.

²⁸⁴ *Ibid.*, preamble.

²⁸⁵ *Ibid.*, preamble.

²⁸⁶ *Ibid.*, §1-2.

For example, future resolutions on the right to food could affirm that ‘healthy and sustainably produced food’ forms part of the right to a healthy environment. Such a resolution could also acknowledge that the realization of the right to a healthy environment is necessary for the realization of other human rights, including the right to food.

Where relevant, future resolutions could also include reference to the Framework Principles. For example, future resolutions on human rights and indigenous peoples could refer to Framework Principle 15, or make use of its language, as it sets out key obligations of states towards indigenous peoples and members of traditional communities. Similarly, future resolutions related to business and human rights could consider Framework Principle 12, or the wording thereof, which affirms that ‘States should ensure the effective enforcement of their environmental standards against public and private actors’.

The work already done to describe the obligations relating to human rights and the environment, as well as the right to a healthy environment itself, can therefore be a key reference point for future resolutions of the Human Rights Council that have important links to the environment. Relying on the work of the Special Rapporteur on human rights and the environment could provide some coherence and consistency to these resolutions and to the Human Rights Council’s approach to human rights and the environment.

B. GENERAL ASSEMBLY RESOLUTIONS

1. GENERAL ASSEMBLY RESOLUTIONS ABOUT THE ENVIRONMENT

There are various recent General Assembly resolutions that are about the environment or particular aspects of the environment. These include resolutions on the oceans, atmosphere and climate. This section focuses on resolutions of this nature from the 76th session of the General Assembly.

Many General Assembly resolutions demonstrate an appreciation for the relationship between the environment and human well-being. The resolutions may not directly mention or address human rights, but their content has implications for the realization of the right to a healthy environment. These resolutions often recognize the impact of environmental degradation and climate change on livelihoods, health, food security, and water and sanitation. In many cases they also recognize the distinct and often disproportionate impacts on particularly vulnerable groups, including women, children, indigenous peoples, those living in rural areas, and more vulnerable countries including developing countries, least developed countries, and small island developing states.

Following an overview of the environmental dimensions of these General Assembly resolutions, this section concludes with general recommendations for the incorporation of the right to a clean, healthy and sustainable environment that could be considered for future resolutions concerning the environment.

a. Protection of the Climate

General Assembly resolution 76/205 is the latest resolution on the ‘Protection of global climate for present and future generations of humankind’. The preamble to the resolution makes reference to ‘the threat posed by climate change and environmental degradation’.²⁸⁷ It acknowledges that adaptation ‘is an urgent priority’ and that it is a particular challenge for those countries that are ‘vulnerable to the adverse effects of climate change’.²⁸⁸ The preamble recognizes that climate change is a driver of ‘biodiversity loss and ecosystem degradation’ and that conserving biodiversity contributes to mitigation and adaptation as well as disaster risk reduction, food security and nutrition.

The body of the resolution expresses concern about the adverse impacts of climate change that threaten ‘food security, water availability and livelihoods’, also recognizing the risks to health.²⁸⁹ The resolution urges states to accelerate the transition to ‘low-emission, climate resilient, inclusive and sustainable economies and societies’.²⁹⁰ The resolution also refers to the need to ‘enhance adaptive capacity, strengthen resilience and reduce vulnerability’ to climate change and extreme weather events,²⁹¹ and to address the range of economic, social and environmental impacts of climate change.²⁹² The resolution recognizes the importance of access to climate finance for adaptation and mitigation,²⁹³ and emphasizes the urgent need to scale up action and support through ‘climate finance, capacity-building and technology transfer’ to strengthen resilience and reduce vulnerability.²⁹⁴ Noting the disproportionate effect of climate change on women and girls, the resolution also urges states to promote ‘the integration of a gender perspective into environmental and climate change policies’ and to ensure the participation of women in environmental decision-making.²⁹⁵

b. Protection of the Atmosphere

Resolution 76/112 recognizes the protection of the atmosphere as important for international relations and takes note of guidelines on the protection of the atmosphere which are annexed to the resolution.²⁹⁶ The preamble of the annex acknowledges that the atmosphere is a natural resource that is ‘essential for sustaining life on Earth, human health and welfare, and aquatic and terrestrial ecosys-

287 UNGA, Res 76/205, 5 January 2022, preamble.

288 Ibid.

289 Ibid, §1.

290 Ibid, §2.

291 Ibid, §7.

292 Ibid, §11.

293 Ibid, §12.

294 Ibid, §13.

295 Ibid, §22.

296 UNGA, Res 76/112, 17 December 2021, preamble and §4.

tems’ and that atmospheric pollution and degradation are ‘a common concern of humankind’.²⁹⁷

The guidelines themselves include, inter alia, an obligation on states to protect the atmosphere and to ensure that environmental impact assessments are undertaken.²⁹⁸ They also affirm that the atmosphere should be utilized sustainably, equitably and reasonably, taking into account the need for economic development as well as the interests of present and future generations.²⁹⁹

c. Oceans and the Law of the Sea

Resolution 76/72 deals with various dimensions of oceans and the law of the sea, such as the implementation of the Convention on the Law of the Sea;³⁰⁰ meeting of States Parties to the Convention;³⁰¹ maritime safety and security;³⁰² the marine environment and marine resources;³⁰³ marine biodiversity;³⁰⁴ and regional cooperation.³⁰⁵

The preamble to the resolution recognizes the importance of the oceans, seas and their resources for sustainable development, ‘including through their contributions to poverty eradication, sustained economic growth, food security and creation of sustainable livelihoods and decent work’ while also protecting biodiversity and addressing climate change.³⁰⁶ The preamble refers to the importance of marine science for poverty eradication, food security, conservation of the marine environment and resources, sustainable development, and understanding, predicting and responding to natural events.

As noted above, the body of the resolution refers to a wide range of issues, and a selection of those more closely related to the realization of human rights and the right to a healthy environment will be mentioned here. Resolution 76/72 recognizes that the livelihoods and security of coastal communities, as well as the lives of people at sea, are threatened by certain forms of transnational organized crime.³⁰⁷ The resolution also notes that ecosystem approaches to the environment should focus on managing human activities in order to ‘maintain and, where needed, restore ecosystem health to sustain goods and environmental services, provide social

297 UNGA, Res 76/112, annex, 17 December 2021, preamble.

298 Ibid, guidelines 3 & 4.

299 Ibid, guidelines 6 & 7.

300 UNGA, Res 76/72, 20 December 2021, §§1-9.

301 Ibid, §§57-58.

302 Ibid, §§118-197.

303 Ibid, §§198-259.

304 Ibid, §§260-290.

305 Ibid, §§332-346.

306 Ibid, Preamble.

307 Ibid, §158.

and economic benefits for food security, sustain livelihoods [...] and conserve marine biodiversity'.³⁰⁸

The resolution recognizes the particular threat of climate change to developing states and, in particular, the risks of sea level rise that certain states are exposed to.³⁰⁹ In addition, the resolution notes with concern the severe impacts of extreme weather events on coastal communities, and encourages action by UN bodies and organizations to assist in improving forecasting.³¹⁰ The resolution also contains provisions aiming to address the challenge of ocean acidification and its impact on communities who depend on marine ecosystems.³¹¹

The resolution encourages states to protect and restore coastal blue carbon ecosystems, noting their role in climate adaptation and mitigation as well as in relation to 'sustainable livelihoods, food security and biodiversity conservation, and coastal protection'.³¹² The resolution also deals with the question of marine debris, with an emphasis on plastics and microplastics encouraging states to take relevant action in this regard.³¹³ In relation to oil spills and pollution from hazardous substances, the resolution urges states to cooperate and share best practices 'in the fields of protection of the marine environment, human health and safety, prevention, emergency response and mitigation'.³¹⁴ States are also encouraged to develop contingency plans to respond to such incidents of marine pollution.³¹⁵

In the context of marine biodiversity, the resolution recognizes the benefits, goods and services that marine genetic resources can provide, as well as the importance of research on these resources.³¹⁶ States are called upon to strengthen 'the conservation and management of marine biodiversity and ecosystems'.³¹⁷ Finally, in relation to marine science, states are called on to improve our knowledge and understanding of oceans, including 'the extent and vulnerability of deep sea biodiversity and ecosystems'.³¹⁸ States are also encouraged to 'establish and sustain their national warning and mitigation systems' in order to reduce loss of life, damage to economies, and to strengthen resilience to natural disasters for coastal communities.³¹⁹

308 Ibid, §202(b).

309 Ibid, §§208-209.

310 Ibid, §215.

311 Ibid, §§216-220.

312 Ibid, §221.

313 Ibid, §§225-235.

314 Ibid, §245.

315 Ibid, §246.

316 Ibid, §§264-265.

317 Ibid, §270.

318 Ibid, §291.

319 Ibid, §303.

d. Implementation of the Convention to Combat Desertification

General Assembly resolution 76/206 focuses on the implementation of the Convention to Combat Desertification.³²⁰ The preamble to the resolution notes that combatting desertification, land degradation and drought 'can contribute to sustainable development for all'.³²¹ It recognizes that 'climate change, unsustainable agricultural and forestry practices and land degradation' are significant drivers of biodiversity loss and ecosystem degradation. The preamble also recognizes that 'conservation, restoration and sustainable use of biodiversity' contribute to land degradation neutrality, climate mitigation and adaptation, disaster risk reduction, and food security and nutrition.³²² The preamble expresses concern about the impacts of desertification, land degradation and drought on vulnerable people, and recognizes the importance of integrating these challenges within the agenda for sustainable development.³²³

The resolution reiterates the need to combat these challenges 'and strive to achieve a land degradation-neutral world'.³²⁴ It affirms that this will contribute to 'safeguarding livelihoods, preventing and preparing for future pandemics and achieving a sustainable, inclusive and climate-resilient recovery' from the COVID-19 crisis.³²⁵ The resolution also stresses the need to address climate change and extreme weather events through enhancing adaptive capacity, strengthening resilience, and reducing vulnerability.³²⁶ In order to ensure sustainable food production, the resolution underlines the importance of combating desertification and water scarcity, and restoring degraded lands, recognizing that healthy land has a critical role to play in the global economy.³²⁷

e. Implementation of the Convention on Biological Diversity

Resolution 76/207 deals with the 'Implementation of the Convention on Biological Diversity and its contribution to sustainable development'. The preamble recognizes that the COVID-19 pandemic underscores the need to 'conserve, restore and sustainably use biodiversity'.³²⁸ It also notes that the pandemic has highlighted the need to 'reduce the risk of the economic, social and environmental impacts of

320 [United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa](#), 1994.

321 [UNGA, Res 76/206](#), 5 January 2022, preamble.

322 Ibid.

323 Ibid.

324 Ibid, §7.

325 Ibid, §10.

326 Ibid, §15.

327 Ibid, §26. On the links between the UN Convention to Combat Desertification and the right to food, see Secretariat of the UNCCD and the UN Special Rapporteur on the Right to Food, *Human Rights and Desertification. Exploring the Complementarity of International Human Rights Law and the United Nations Convention to Combat Desertification*, UNCCD, 2008.

328 [UNGA, Res 76/207](#), 6 January 2022, preamble.

disasters and future pandemic outbreaks’, recognizing that many of these are exacerbated by loss of biodiversity. Building back better therefore includes enhancing efforts ‘to build resilience, to reduce the likelihood of zoonotic infections and to avoid or minimize adverse impacts on biological diversity’.³²⁹ The preamble also reaffirms the role of biodiversity in maintaining ecosystems, which in turn provide services that are critical for sustainable development and human well-being. The objectives of the Convention on Biological Diversity are recognized as ‘crucial for sustainable development, poverty eradication, food security and the improvement of human well-being’.³³⁰

The resolution urges the mainstreaming of biodiversity in ‘COVID-19 response and recovery efforts’, emphasizing that the links between health and biodiversity should be addressed holistically.³³¹ It notes that biodiversity loss and degradation increases the risk of zoonotic diseases and that ‘biodiversity should continue to be mainstreamed in COVID-19 recovery plans and in plans aimed at reducing the risk of future pandemics’.³³² The resolution also recognizes that the conservation and sustainable use of biodiversity can contribute to reducing disaster risk and adverse climate impacts.³³³ The resolution calls upon governments and stakeholders to mainstream the consideration of ‘the socioeconomic impacts and benefits of the conservation and sustainable use of biodiversity and its components’ in relevant programmes and policies.³³⁴ Finally, the resolution reaffirms the 2030 Agenda’s commitment to leave no one behind, committing to taking steps to support those in vulnerable situations and vulnerable countries and ‘to reach the furthest behind first’.³³⁵

RECOMMENDATIONS FOR FUTURE RESOLUTIONS

Following the recognition of the right to a healthy environment, it is important to explicitly recognize and affirm the relationship between human rights and the environment. Many of the recommendations that follow are similar to those referred to above in the context of Human Rights Council resolutions. Future resolutions from the General Assembly that directly relate to the environment could include an acknowledgement of the right in their preambles. The body of these resolutions could also refer to the right to a healthy environment, or elements thereof, wherever these are relevant.

General Assembly resolution 76/300 explicitly states that the right requires the full implementation of multilateral environmental agreements under the principles

329 Ibid.

330 Ibid.

331 Ibid, §8.

332 Ibid, §9.

333 Ibid, §22.

334 Ibid, §30.

335 Ibid, §44.

of international environmental law.³³⁶ A number of General Assembly resolutions that concern the environment are specifically related to the implementation of such agreements. Where appropriate, future General Assembly resolutions concerning the implementation of multilateral environmental agreements (MEAs) could consider the relationship between these MEAs and the right to a clean, healthy and sustainable environment.

Where General Assembly resolutions address thematic areas that fall within the scope of the right, as delineated by the Special Rapporteur in, for example, the Special Rapporteur’s 2019 Good Practices Report and discussed at 3.A.2 above, these resolutions could recognize that what they are addressing is an element or component of that right. For example, a resolution concerning the atmospheric pollution could contain a preambular recognition that clean air should be considered part of the right recognized in resolution 76/300. Where appropriate, relevant thematic reports published by the Special Rapporteur could also be taken note of.

Another way to mainstream the right and promote its content would be to use language and phrases from the Framework Principles and the components of the right in the Special Rapporteur’s 2019 Good Practices Report. For example, resolutions concerning biodiversity could make reference to ‘healthy ecosystems and biodiversity’ and resolutions concerning agriculture and food security could refer to ‘healthy and sustainably produced food’. Similarly, resolutions related to sustainable development could, for example, consider the language of Framework Principle 16 which states that ‘States should respect, protect and fulfil human rights in the actions they take to address environmental challenges and pursue sustainable development’.

2. GENERAL ASSEMBLY RESOLUTIONS RELATED TO THE ENVIRONMENT

There is a wide range of General Assembly resolutions that address issues related to the environment. This includes numerous resolutions concerning sustainable development, such as those dealing with sustainable fisheries,³³⁷ sustainable tourism,³³⁸ investments for sustainable development,³³⁹ education for sustainable development,³⁴⁰ science and technology for sustainable development,³⁴¹ plant fibres and sustainable development,³⁴² and coastal management and sustainable development.³⁴³ As it is not possible to examine all of these resolutions, this section will

336 UNGA, Res 76/300, supra fn 151, §3.

337 UNGA, Res 76/71, 17 December 2021.

338 UNGA, Res 76/201, 5 January 2022.

339 UNGA, Res 76/197, 10 January 2022.

340 UNGA, Res 76/209, 6 January 2022.

341 UNGA, Res 76/213, 7 January 2022.

342 UNGA, Res 76/223, 11 January 2022.

343 UNGA, Res 76/212, 6 January 2022.

focus on those resolutions related to the environment that are most closely linked to human rights, and the right to a healthy environment in particular. As with the section above, the focus will be on resolutions from the General Assembly's 76th session, followed by recommendations for future resolutions of this nature.

a. A Democratic and Equitable International Order

Resolution 76/165 addresses the promotion of a democratic and equitable international order. In its preamble the resolution expresses concern about the global economic, financial, energy and food crises and the related threats to the enjoyment of human rights. It is recognized that these crises are the result of several factors including 'environmental degradation, desertification and global climate change, natural disasters' as well as the lack of necessary resources to respond to these negative impacts in developing countries.³⁴⁴ The preamble stresses the need for adequate financing and other support for developing countries to, inter alia, adapt to climate change.

The resolution affirms that 'a democratic and equitable international order' requires the realization of a range of rights and other related objectives.³⁴⁵ The rights listed in the resolution include, for example, the rights to self-determination,³⁴⁶ development³⁴⁷ and equitable participation in domestic and global decision-making.³⁴⁸ Importantly, the resolution includes the right to a healthy environment in this list, describing it as follows:

'The right of every person and all peoples to a healthy environment and to enhanced international cooperation that responds effectively to the needs for assistance of national efforts to adapt to climate change, particularly in developing countries, and that promotes the fulfilment of international agreements in the field of mitigation.'³⁴⁹

While it is encouraging to see the right to a healthy environment included in this General Assembly resolution which predates resolution 76/300, it is important to note that it was not adopted unanimously. There were 124 votes in favour of the resolution, 54 against, and nine abstentions. In any event, this resolution affirms that the right to a healthy environment is seen as a prerequisite for 'a democratic and equitable international order' by a majority of states.

b. Right to Food

The right to food is dealt with in resolution 76/166. The preamble acknowledges that the right includes a right to have access to food 'that is produced and con-

³⁴⁴ UNGA, Res 76/165, 7 January 2022, preamble.

³⁴⁵ Ibid, §6.

³⁴⁶ Ibid, §6(a).

³⁴⁷ Ibid, §6(c).

³⁴⁸ Ibid, §6(h).

³⁴⁹ Ibid, §6(l).

sumed sustainably, thereby preserving access to food for future generations'.³⁵⁰ The preamble also recognizes the importance of 'traditional sustainable agricultural practices' as well as the complex character of food insecurity, noting that the major contributing factors include 'environmental degradation, desertification and the adverse impacts of climate change' as well as natural disasters and drought. Sustainable food systems are recognized as important for the guarantee of food security and nutrition, while climate change is identified as a threat to livelihoods, agricultural productivity and food and nutrition security. The preamble notes with concern that the adverse impacts of climate change and natural disasters 'are expected to increase with future climate change'. It also recognizes the importance of protecting and preserving agrobiodiversity and its role 'in guaranteeing food security and nutrition and the right to food for all'.

The body of the resolution on the right to food reaffirms the right to have access to 'safe, sufficient, nutritious and sustainably produced food'.³⁵¹ The resolution stresses the importance of fighting hunger in rural areas through, inter alia, efforts to stop desertification and land degradation.³⁵² It also recognizes the important role played by indigenous peoples, as well as new technologies, in 'the conservation of biodiversity and in aiming to ensure food security and improved nutrition'.³⁵³ The resolution recognizes the impacts of climate change and El Niño on 'agricultural production and food security around the world' and notes the importance of reducing these effects on vulnerable populations in particular.³⁵⁴ Finally, the resolution also refers to the relationship between the rights to water and food, recalling the importance of 'sustainable access to water resources' for agriculture and the right to food.³⁵⁵

c. Rights to Water and Sanitation

Resolution 76/153 concerns the rights to safe drinking water and sanitation. The preamble acknowledges that lack of access to basic drinking water and basic sanitation is more likely to occur in countries that are affected by natural disasters and particularly vulnerable to the impacts of climate change.³⁵⁶ It also expresses concern that inadequate water management and wastewater treatment affects access to safe drinking water, and that '80 per cent of the world's wastewater is released into the environment without treatment'. The preamble also expresses concern regarding climate change, its effect on natural disasters and slow-onset events, and the related impact on the rights to water and sanitation. It recognizes that the consequences of climate change and environmental degradation for these rights are 'felt most acutely' by those in vulnerable situations, including people

³⁵⁰ UNGA, Res 76/166, 7 January 2022, preamble.

³⁵¹ Ibid, §2.

³⁵² Ibid, §19.

³⁵³ Ibid, §21.

³⁵⁴ Ibid, §44.

³⁵⁵ Ibid, §48.

³⁵⁶ UNGA, Res 76/153, 7 January 2022, preamble.

living in informal settlements, small island states, and rural communities. It goes on to recognize that indigenous peoples may be among the first to feel the impacts of climate change ‘owing to their dependence upon and close relationship with the environment and its resources’.³⁵⁷

The resolution calls upon states to, inter alia, enhance efforts to reduce untreated wastewater released into the environment and to ensure that improvements to sanitation services take the need for appropriate wastewater treatment into account, ‘with the aim of reducing the risks to human health, drinking water resources and the environment’.³⁵⁸ In the context of response and recovery from health crises like the COVID-19 pandemic, the resolution calls upon states to enhance efforts to realize the rights to water and sanitation and to implement integrated water resources management ‘in order to ensure a sustainable supply of water for life, agriculture and food production and other ecosystem services and other benefits’.³⁵⁹

d. Indigenous Peoples’ Rights

The rights of indigenous peoples are addressed in resolution 76/148.³⁶⁰ The preamble to the resolution recognizes the ‘cultural, social, economic, political and environmental contributions’ of indigenous people, with particular reference to their contributions in the context of climate mitigation and adaptation. It also recognizes their traditional knowledge of ‘their lands, natural resources and environment’ and that including indigenous traditional knowledge in agricultural practices can help to overcome the challenges of ‘climate change, food security, biodiversity conservation and combating desertification and land degradation’.³⁶¹

The resolution recognizes that indigenous people are among the first to face the effects of climate change due to their relationship with the environment and its resources.³⁶² In the context of climate change and extreme weather events, the resolution stresses the urgent need to ‘enhance adaptive capacity, strengthen resilience and reduce vulnerability of indigenous peoples’.³⁶³ It also stresses the need to support indigenous peoples in their efforts to address and respond to climate change, encouraging states to ensure ‘the full and effective participation of indigenous peoples in decision-making processes relating to climate change on issues affecting them’.³⁶⁴ The resolution also encourages actions to achieve food security and end hunger and malnutrition for indigenous children through, inter alia, building sustainable food systems.³⁶⁵

³⁵⁷ Ibid.

³⁵⁸ Ibid, §5(p).

³⁵⁹ Ibid, §9.

³⁶⁰ UNGA, Res 76/148, 6 January 2022, preamble.

³⁶¹ Ibid.

³⁶² Ibid, §12.

³⁶³ Ibid, §13.

³⁶⁴ Ibid.

³⁶⁵ Ibid, §34.

e. Rights of the Child

Resolution 76/147 on the rights of the child expresses profound concern in its preamble about the negative impacts of climate change and environmental degradation on children, including ‘natural disasters, persistent drought, extreme weather events, land degradation, sea level rise, coastal erosion and ocean acidification, loss of biodiversity and pollution’.³⁶⁶ The preamble notes that these challenges threaten ‘health, food security and efforts to eradicate poverty and achieve sustainable development’. The preamble reaffirms the obligation on states to promote, respect, protect and fulfil human rights ‘including in actions undertaken to address environmental harm’.³⁶⁷ It also reaffirms the obligation to take measures to protect the rights of children as well as the obligation to take additional measures to protect those who are ‘particularly vulnerable to the effects of environmental harm’.³⁶⁸ These last two obligations are consistent with the language of the Special Rapporteur’s Framework Principles.³⁶⁹

The resolution reaffirms the link between children’s rights and the 2030 Agenda,³⁷⁰ and urges states to take action to achieve the SDGs.³⁷¹ Such action includes increasing cooperation to address the impacts of environmental harm, taking measures to place children at the centre of strategies and responses to climate change,³⁷² ambitious climate mitigation and adaptation to minimise the impacts of climate change on children ‘to the greatest extent possible’,³⁷³ and encouraging environmental and human rights impact assessments for the private sector in order to ‘identify, prevent, mitigate and account for the adverse impacts business activities have on the rights of the child’.³⁷⁴

f. Access to Energy

Resolution 76/210 deals with the issue of ensuring access to affordable, reliable, sustainable and modern energy for all. The preamble recognizes that energy services are essential for recovery from ‘the COVID-19 pandemic and socioeconomic crises’, including for, inter alia, supplying water and sanitation, supporting sustainable food systems and providing communications and digital services.³⁷⁵ The preamble also notes that, in some instances, ‘substitution of inefficient fuels with liquid petroleum gas or other sustainable household fuels’ may be appropriate in order to reduce negative health impacts of certain fuels used for cooking.³⁷⁶

³⁶⁶ UNGA, Res 76/147, 6 January 2022, preamble.

³⁶⁷ Cf Human Rights Council, UN doc A/HRC/37/59, annex, supra fn 121, principle 16.

³⁶⁸ Ibid, principle 14.

³⁶⁹ Ibid, principles 14 and 16.

³⁷⁰ UNGA, Res 76/147, supra fn 366, §28.

³⁷¹ Ibid, §31.

³⁷² Ibid, §31(j).

³⁷³ Ibid, §31(k).

³⁷⁴ Ibid, §31(l).

³⁷⁵ UNGA, Res 76/210, 6 January 2022, preamble.

³⁷⁶ Ibid.

The resolution strongly encourages action, inter alia, to achieve universal access to ‘affordable, reliable, sustainable and modern energy’, to increase the share of new and renewable energy, and to increase energy efficiency.³⁷⁷ In calling for access to energy for all, the resolution notes that this is integral to many other services including poverty eradication, the promotion of health, education, food security, disaster risk reduction, climate mitigation and adaptation and the reduction of environmental impacts, among others.³⁷⁸ The resolution underscores the importance of ‘cleaner and more efficient and sustainable cooking and heating methods’, calling for an increased use of such methods, particularly in developing countries.³⁷⁹ The resolution also calls for, inter alia, the expanded use of renewable energy,³⁸⁰ improvements in energy efficiency,³⁸¹ sustainable use of traditional energy sources,³⁸² and the promotion of ‘an integrated resource planning and management approach’ to energy strategies that considers the relationship between sectors including water, waste, air quality and food.³⁸³ In addition, the role of gender equality and the empowerment of women and girls is recognized, with the resolution calling for women’s participation and the mainstreaming of a gender perspective in energy-related policies and programmes.³⁸⁴ Finally, with respect to climate change, the resolution emphasizes the potential contribution of sustainable energy use to climate mitigation and adaptation, urging full implementation of nationally determined contributions under the Paris Agreement. The resolution also notes that the impacts of climate change can ‘threaten access to and the supply of energy’, noting that expanded renewable energy would increase resilience of the energy sector to climate change.³⁸⁵

g. Human Rights Defenders

The position of human rights defenders is addressed in resolution 76/174.³⁸⁶ The resolution concerns ‘Implementing the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms through providing a safe and enabling environment for human rights defenders and ensuring their protection, including in the context of and recovery from the coronavirus disease (COVID-19) pandemic’. Although it is not focused on environmental issues, the resolution remains relevant for environmental protection and includes specific references to environmental human rights defenders.

³⁷⁷ Ibid, §4.

³⁷⁸ Ibid, §5.

³⁷⁹ Ibid, §6.

³⁸⁰ Ibid, §10.

³⁸¹ Ibid, §11.

³⁸² Ibid, §13.

³⁸³ Ibid, §16.

³⁸⁴ Ibid, §17.

³⁸⁵ Ibid, §20.

³⁸⁶ UNGA, Res 76/174, 10 January 2022.

The preamble recognizes the role of human rights defenders, including in environmental protection, and reaffirms that ‘promoting respect, support and protection for the activities of human rights defenders, including women, indigenous and environmental human rights defenders, is essential to the overall enjoyment of human rights’.³⁸⁷ The preamble also expressly recognizes the role of human rights defenders in the promotion and protection of human rights ‘as they relate to the enjoyment of a safe, clean, healthy and sustainable environment’, while expressing concern that environmental human rights defenders are among those most exposed and at risk.³⁸⁸

The resolution expresses grave concern regarding the situation of human rights defenders and strongly condemns all violations and abuses against human rights defenders, ‘including women, environmental and indigenous human rights defenders’.³⁸⁹ The resolution also strongly affirms the need to ‘respect, protect, facilitate and promote’ the work of human rights defenders in the area of economic, social and cultural rights, as their work is a vital contribution to the realization of those rights ‘including as they relate to environmental, land and indigenous issues and business activity’.³⁹⁰

RECOMMENDATIONS FOR FUTURE RESOLUTIONS

It is once again clear that many resolutions that may not explicitly deal with the environment, have important links to the environment and therefore also have relevance for the right to a clean, healthy and sustainable environment. Future resolutions will have to take these links to the environment into account and consider the role of the right to a healthy environment.

As recommended in the context of Human Rights Council resolutions, it is recommended that elements of the right to a healthy environment are recognized as such in future General Assembly resolutions. For example, future resolutions on water and sanitation could include a recognition that ‘access to safe water and adequate sanitation’ forms part of the right to a healthy environment.

Where there are Framework Principles that have relevance for the content of a resolution, these could be included. Where direct reference to the Framework Principles is not appropriate, the wording of the Framework Principles could be used as a point of departure in formulating future resolutions. For example, resolutions concerning the rights of the child or other particularly vulnerable groups could refer to the language of Framework Principle 14 which affirms that ‘States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and

³⁸⁷ Ibid, preamble.

³⁸⁸ Ibid.

³⁸⁹ Ibid, §5.

³⁹⁰ Ibid, §23.

capacities'. Similarly, resolutions concerning indigenous peoples could refer to the obligations set out in Framework Principle 15. In this way, the Framework Principles could serve as a guide when addressing the relationship between human rights and the environment in future resolutions.

C. Concluding Remarks on the Inclusion of the Right to a Healthy Environment in Future Resolutions

Incorporating the right to a healthy environment in future resolutions of the Human Rights Council and the General Assembly will assist in mainstreaming the right and advancing its implementation. As is evident from the examples above, both the General Assembly and the Human Rights Council demonstrate an appreciation for the interrelationship between human rights and the environment. In the case of the Human Rights Council, this relationship is explicitly recognized in resolutions on human rights and the environment, and in the recognition of the right to a clean, healthy and sustainable environment. The General Assembly is less explicit when it comes to articulating the human rights dimensions of environmental challenges, but the relationship is still there. Rather than refer directly to human rights, the General Assembly refers to matters related to human rights, such as poverty eradication, health, livelihoods, education, and food security. Where other human rights are not explicitly discussed, it is not recommended that references to the right to a healthy environment are shoe-horned into future resolutions where this is not appropriate. Given that all human rights are indivisible, interdependent and interrelated, there is a risk that an excess or over-inclusion of references to the right to a healthy environment could overshadow other equally important human rights. In such instances, without direct reference to the right, the contents of the right to a healthy environment could be incorporated where relevant, including any applicable framework principles. The General Assembly resolution on the rights of the child is a good example of a resolution that incorporates elements of the right to a healthy environment and the framework principles on human rights and the environment, without explicitly mentioning either of these.

However, in resolutions concerning specific human rights, other related rights are often mentioned where they have a close relationship with that right. For example, the recent General Assembly resolution on the right to food expressly mentions the right to water and its relationship to food.³⁹¹ It is therefore recommended that the right to a clean, healthy and sustainable environment is expressly included in resolutions concerning another right that has a particularly close relationship with the right. In some cases, it may also be appropriate to refer to the fact that the right to a healthy environment is related to other rights and existing international law, as recognized in General Assembly resolution 76/300.³⁹²

Given the particular relationship between international environmental law and the right to a healthy environment, the recommendations above also underscore

³⁹¹ UNGA, Res 76/166, *supra* fn 350, §48.

³⁹² UNGA, Res 76/300, *supra* fn 151, §2.

the need to emphasize this. The implementation of international environmental law is linked to the realization of the right to a healthy environment, and the recognition of the right means that, in many cases, international environmental obligations are also human rights obligations. It is important to develop this relationship while also maintaining the boundaries of these two distinct areas of international law.

It must be noted that, due to the scope of the research, it was not possible to discuss all resolutions that are linked to the environment. There are numerous other thematic resolutions from the Human Rights Council and the General Assembly where the environment is a significant factor. It is also important to consider the role of the environment in the context of country-specific resolutions. For example, various country-specific resolutions relate to issues that impact on the environment, or that arise as a result of environmental harm.³⁹³ Some ongoing conflicts are caused or exacerbated by environmental factors such as unsustainable exploitation of natural resources, extreme weather events, drought and desertification.³⁹⁴ Conversely, conflicts themselves also contribute to environmental harm, thereby exacerbating the violation of human rights.³⁹⁵ It will be important to develop a coherent approach to addressing the relationship between the environment and human rights for such resolutions in future.

The recommendations for future Human Rights Council and General Assembly resolutions in this briefing will hopefully provide a useful point of departure in mainstreaming the right to a healthy environment and consolidating the relationship between human rights and the environment.

³⁹³ See, for example, Human Rights Council, *Technical Assistance and Capacity-Building to Address the Human Rights Implications of the Nuclear Legacy in the Marshall Islands*, UN doc A/HRC/RES/51/35, 13 October 2022; Human Rights Council, *Technical Assistance and Capacity-Building for Yemen in the Field of Human Rights*, UN doc A/HRC/RES/51/39, 11 October 2022; Human Rights Council, *Situation of Human Rights in the Bolivarian Republic of Venezuela*, UN doc A/HRC/RES/51/29, 13 October 2022; UNGA, Res 76/177, 10 January 2022; UNGA, Res 76/178, 10 January 2022.

³⁹⁴ See, for example, Human Rights Council, *Situation of Human Rights in Ethiopia*, UN doc A/HRC/RES/51/27, 12 October 2022.

³⁹⁵ See, for example, UNGA, Res 76/179, 10 January 2022; UNGA, Res 76/225, 11 January 2022. See also UNGA, Res 76/39, 10 December 2021.

5. CONCLUSION

There is no doubt that the relationship between human rights and the environment remains a crucial factor in environmental protection and in the realization of human rights. The right to a healthy environment is likely to become the primary framework for understanding this relationship, particularly in light of its recent recognition by the Human Rights Council and General Assembly.

As the Special Rapporteur on human rights and the environment has argued, the right to a healthy environment is not an empty vessel waiting to be filled.³⁹⁶ Its scope and contents have been studied and established in various contexts, including through regional and international jurisprudence and through the work of the current and former Special Rapporteur mandate holders. This does not mean that the right would not benefit from further delineation, but rather that many essential elements of the right have been established and thus provide a point of departure for understanding its scope.

What is required now is the promotion and implementation of the right to a clean, healthy and sustainable environment. The Human Rights Council and the General Assembly can contribute to the enjoyment of this right by incorporating references to the right in resolutions where it is relevant and appropriate to do so. This includes resolutions concerning related human rights, as well as resolutions addressing environmental matters. Mainstreaming the right in the work of the Human Rights Council and the General Assembly could contribute to the promotion of the right and also facilitate its implementation. The explicit recognition of the right to a clean, healthy and sustainable environment is an essential step in advancing human rights and environmental protection for all. However, this recognition is only meaningful if it is followed by further integration of human rights and the environment in international law as well as practical implementation of the right to a clean, healthy and sustainable environment.

³⁹⁶ UNGA, UN doc A/73/188, *supra* fn 108, §38.

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