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The right to a clean, healthy and sustainable environment as a human right. From Indirect Protection to International Recognition

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Abstract

This research addresses the right to a clean, healthy and sustainable environment as a fundamental human right, tracing its development within the framework of international human rights law. The importance of Human Rights Council Resolution 48/13 and United Nations General Assembly Resolution 76/300 in establishing this right at the international level is also highlighted. Furthermore, it examines the obligations incumbent upon states, as well as the legal safeguards necessary for its protection. The research concludes that the effectiveness of this recognition is contingent upon legislative and institutional reinforcement, as well as the provision of effective remedies.

Keywords: The right to a clean, healthy and sustainable environment, international recognition, international human rights law, Resolution 48/13, states' environmental obligations.

Introduction:

In light of increasing levels of pollution, the degradation of ecosystems, the loss of biodiversity, climate change and the depletion of natural resources witnessed worldwide, environmental protection has become one of the most prominent challenges facing the international community. These phenomena affect a range of fundamental human rights, including the rights to life, health, food and water, and an adequate standard of living. This has made it necessary to recognise the right to a healthy and sound environment as a human right.

The recognition of this right has evolved gradually. Initially, it was protected indirectly through the enshrinement of various rights set out in international human rights instruments. This protection was subsequently strengthened by developments in international environmental law, particularly since the Stockholm Declaration of 1972 and the Rio Declaration on Environment and Development of 1992. Regional human rights systems and international and regional judicial jurisprudence have also helped to define this right and the obligations of States.

The United Nations Human Rights Council's adoption of Resolution 48/13 on 8 October 2021, concerning 'the right to a clean, healthy and sustainable environment', marked an important stage in the process of explicitly recognising this right at an international level. This trend was subsequently reinforced by the United Nations General Assembly through the adoption of Resolution 76/300 on 28 July 2022, which recognised this right as a human right for all.

The enshrinement of this right in international law is particularly important for defining its content and determining the obligations incumbent upon states, including the obligation to respect, protect and fulfil this right, prevent environmental harm, ensure access to information and participation in decision-making, and provide access to justice and remedies, as well as protect groups most exposed to environmental risks.

Based on this, the study asks the following research question:

To what extent has the enshrinement of the right to a clean, healthy and sustainable environment in international law contributed to consolidating this right within the human rights system and strengthening its protection?

In order to answer this question, the study is divided into two sections.

Section One: The Development of International Recognition of the Right to a Clean, Healthy and Sustainable Environment

Subsection 1: Early international developments in the recognition of the right to a clean, healthy and sustainable environment.

Subsection Two: The international enshrinement of the right to a healthy and sustainable environment as a human right.

Section Two: The Legal Framework for Protecting the Right to a Healthy, Clean and Sustainable Environment.

Subsection 1: Substantive framework principles for the protection of the right to a healthy, clean and sustainable environment.

Subsection 2: Procedural framework principles for the protection of the right to a healthy, clean and sustainable environment.

Section One: The Development of International Recognition of the Right to a Clean, Healthy and Sustainable Environment

The relationship between environmental protection and human rights has gradually evolved in international law, shifting from indirect environmental protection through fundamental rights to the explicit recognition of the right to a clean, healthy and sustainable environment. This study therefore requires an examination of the legal basis that paved the way for the enshrinement of this right, followed by an overview of the stages of its explicit international recognition.

Section 1: Early International Developments in the Recognition of the Right to a Clean, Healthy and Sustainable Environment

The right to a clean, healthy and sustainable environment did not initially emerge as an independent right. Rather, it was gradually protected through a set of international rules and principles related to human rights and environmental protection. This study therefore requires an examination of the most important international instruments and principles that established the legal protection of this right and paved the way for its recognition.

First Branch: The Right to a Clean, Healthy and Sustainable Environment in International Human Rights Instruments

While the 1948[1] Universal Declaration of Human Rights enshrined fundamental rights to which all individuals are entitled regardless of discrimination, including the rights to dignity and life, it contained no explicit reference to the right to a healthy environment. Similarly, this right was not included as an independent right in either the International Covenant on Civil and Political[2] Rights or the International Covenant on Economic, Social and Cultural Rights. Nevertheless, both covenants indirectly protected the environment by safeguarding rights that cannot be realised in a polluted or hazardous environment. The most significant of these are the rights to life, health and an adequate standard of living.

With reference to the International Covenant on Economic, Social and Cultural Rights, Article 12 affirms everyone's right to the highest attainable standard of physical and mental health. The realisation of this right is linked to improvements in all aspects of environmental and industrial hygiene, as well as the prevention, treatment and control of epidemic, endemic, occupational and other diseases. Therefore, environmental protection is one of the key components of protecting the right to health, even though the Covenant does not recognise an independent right to a clean, healthy and sustainable environment[3].

The Committee on Economic, Social and Cultural Rights has also helped to clarify this relationship. In General Comment No. 14 on the right to health, the Committee affirmed that this right encompasses not only healthcare, but also the underlying determinants of health. These include access to safe and potable water, adequate and appropriate sanitation, safe food, adequate housing, safe and healthy working conditions, and a healthy environment. This includes preventing and reducing the population's exposure to harmful substances such as radiation and hazardous chemicals, as well as other conditions that affect human health directly or indirectly. Furthermore, industrial hygiene involves minimising the causes of health hazards in the working environment[4].

Conversely, the right to environmental protection is linked to the right to life. The right to life is not solely understood as protection against the arbitrary deprivation of life. In General Comment No. 36, the Human Rights Committee stated that environmental degradation, climate change, and unsustainable development pose serious threats to the right to life of present and future generations. The Committee also established a link between states' obligations under international environmental law and their obligations to respect and ensure the right to life. Therefore, linking the protection of the right to life with environmental protection is an important step towards recognising the right to a clean, healthy and sustainable environment as a human right[5].

This trend was further strengthened by the 1972 United Nations Conference on the Human Environment in Stockholm, considered the first global conference to prioritise environmental issues. The Declaration set out 26 principles, the first of which

affirmed that human beings have a fundamental right to freedom, equality, and adequate living conditions in an environment that allows them to live with dignity and well-being. It also emphasised their responsibility to protect and improve the environment for present and future generations[6]. This trend was subsequently reinforced by the 1992 Rio Declaration on Environment and Development, particularly through Principle 10, which enshrined the procedural dimensions of environmental protection: access to environmental information, participation in decision-making and access to justice[7].

Second Branch: The Role of Regional Human Rights Systems in Shaping the Right to a Clean, Healthy and Sustainable Environment

The development of this right has not only occurred at the international level, but also within regional human rights systems. These systems have played a key role in clarifying the features of this right and developing its protection. The African system is at the forefront of this development, followed by the Inter-American system and finally the European system.

First: The Right to a Clean, Healthy and Sustainable Environment in the African Human Rights System

The 1981 African Charter on Human and Peoples' Rights (the Banjul Charter) provides in Article 24 that 'all peoples shall have the right to a general satisfactory environment favourable to their development'[8]. This provision is particularly important because it protects the environment directly, rather than indirectly through other rights. It incorporates the environment among the rights enjoyed by individuals and peoples, reflecting a clear development in the legal perspective on the relationship between the environment and human rights.

It is worth noting that the aforementioned article uses the term 'peoples' rather than limiting its scope to 'individuals'. This is consistent with the collective nature of many of the rights enshrined in the African Charter. It also reflects the particularity of the African system, which recognises a set of collective rights alongside individual rights, including the right to a favourable environment for development. Consequently, environmental protection within this framework is not solely linked to individual interests, but also extends to protecting communities and peoples, and their right to enjoy an environment that enables them to achieve development.

Secondly, the right to a clean, healthy and sustainable environment in the Inter-American human rights system.

The 1969[9] American Convention on Human Rights did not include an explicit provision enshrining the right to a healthy environment within its legal framework of human rights. However, within this framework, environmental protection was linked to a number of other rights, particularly the right to life and the right to personal integrity, as set out in Articles 4 and 5 respectively. This right was further strengthened by the adoption of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights in 1988, also known as the 'Protocol of San Salvador'. Article 11 of this protocol explicitly recognises the right of every person to live in a healthy environment and to have access to basic public services. It also obliges States Parties to promote the protection, preservation and improvement of the environment[10].

The development was not confined to treaty provisions; regional judicial practice also played a part in establishing the legal relationship between human rights and the environment. A notable example is Advisory Opinion No. OC-23/17, which was issued by the Inter-American Court of Human Rights on 15 November 2017. In this opinion, the Court recognised the undeniable relationship between environmental protection and the enjoyment of human rights. This is because environmental degradation and the adverse effects of climate change impact the effective enjoyment of rights such as the right to life, health, food, water and housing.

The Court also affirmed that the right to a healthy environment has two dimensions: an individual dimension and a collective dimension. The collective dimension concerns the public interest of present and future generations, and a violation of this right may directly or indirectly affect individuals due to its relationship with the rights to health, personal integrity and life. In this opinion, the Court also considered that the right to a healthy environment is fundamental to the existence of humankind. Accordingly, it emphasised states' environmental obligations in the context of protecting the rights to life and personal integrity, thereby confirming the close relationship between environmental protection and the enjoyment of human rights[11].

Regional efforts in the Americas have resulted in the Escazú Agreement, widely regarded as one of the most significant modern regional instruments linking human rights and environmental protection. Officially entitled the "Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean", it is a regional agreement for Latin America and the Caribbean. Adopted in Escazú, Costa Rica, on 4 March 2018, the Agreement entered into force on 22 April 2021. The Agreement aims to guarantee environmental procedural rights and promote sustainable development, paying particular attention to individuals and groups in vulnerable situations.

Notably, this agreement explicitly enshrines the right to a healthy environment through the provisions of Article 4(1), which states the following: 'Each Party shall guarantee the right of every person to live in a healthy environment, as well as any other universally recognised human right related to this Agreement[12].' Thus, the Agreement not only recognises this right, but also establishes procedural safeguards for it, primarily through three interrelated rights: the right of access to environmental information, the right to public participation in environmental decision-making, and the right of access to justice in environmental matters. Additionally, it establishes an obligation to protect individuals and human rights defenders in environmental matters[13].

Accordingly, the Escazú Agreement is one of the most significant regional instruments as it signifies a shift from indirectly protecting the environment through human rights to explicitly recognising the right to a healthy environment. It safeguards this right by providing individuals and groups with the means to seek protection through procedural and institutional mechanisms.

Third: the right to a clean, healthy and sustainable environment in the European human rights system.

Upon examining the 1950 European Convention on Human Rights, no explicit provision establishing the right to a clean and sustainable environment as an independent right is found. However, the 1961 European Social Charter, which forms a complementary basis for the European system of human rights protection, does address the right to a healthy and safe environment. This is evident in the provisions of Article 11 concerning the right to health protection, and Article 3 concerning the right to work in safe and healthy conditions[14].

In this context, on 27 September 2022, the Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec(2022)20 concerning human rights and the protection of the environment. Through this recommendation, the Committee affirmed the connection between the right to well-being and life and the need to respect human rights and provide a clean, healthy and sustainable environment for present and future generations.

The Recommendation also urged member states to consider recognising the right to a clean, healthy and sustainable environment at a national level while upholding general environmental principles such as the principles of non-harm, prevention and precaution. It also called for the effective enjoyment of rights without discrimination to be ensured, including the right to a healthy environment, for vulnerable and disadvantaged groups such as children, indigenous peoples, older persons, persons with disabilities and women.

Furthermore, the Recommendation calls upon Member States to ensure non-discriminatory access to information and justice in environmental matters, as well as public participation in environmental decision-making and environmental education[15].

Through this Recommendation, the Committee of Ministers called upon Member States to:

- Consider the nature, content and implications of the right to a clean, healthy and sustainable environment, and on this basis, recognise this right as a human right at the national level.

- Review their national legislation and practices in accordance with the recommendations, principles and guidelines set out in the annex to this Recommendation[16].

The European Court of Human Rights has also expanded the scope of environmental protection through its judgments by interpreting the provisions of the European Convention on Human Rights in light of the evolving nature of environmental risks and their relationship with fundamental rights. This was demonstrated in the López Ostra v. Spain case. In its judgment delivered on 9 December 1994, the Court affirmed the relationship between the environment and the right to respect for private and family life, as set out in Article 8 of the European Convention on Human Rights. The Court considered that environmental pollution, even when it does not pose a proven serious threat to individuals' health, may affect their well-being and prevent them from enjoying their homes and private and family lives[17].

In the case of Öneryıldız v. Turkey, concerning an explosion at a waste collection site that resulted in the deaths of nine of the applicant's relatives, the Court affirmed the connection between the right to life and the environment in its judgment of 30 November 2004, despite the authorities being aware of the potential risks. The Court held that the right to life had been violated due to a failure to take the necessary measures to prevent the danger, as well as due to deficiencies in the regulatory and supervisory framework. The Court emphasised the state's responsibility to take preventive measures when authorities are aware of serious environmental risks that threaten human life, particularly in industrial activities and facilities involving significant hazards[18].

On 9 April 2024, the European Court of Human Rights also affirmed the close relationship between climate change and human rights in its judgment in Verein KlimaSeniorinnen Schweiz and Others v. Switzerland. In this judgment, delivered by the Grand Chamber, the Court found a violation of Article 8 with respect to the applicant association. The Court also found a violation of Article 6(1) concerning the association's right of access to a court. Furthermore, the Court affirmed that Article 8 may encompass effective protection against the serious adverse effects of climate change on life, health and well-being, and that states must establish and implement appropriate regulatory frameworks to address climate-related risks[19].

What may be said in this regard is that the European Court of Human Rights has developed the right to the environment indirectly by protecting individuals from certain forms of environmental harm whenever such harm affects rights and freedoms guaranteed by the European Convention on Human Rights, such as the right to life, the right to respect for private and family life and the home, the right to a fair trial and access to information in environmental contexts, the prohibition of torture and inhuman or degrading treatment, and freedom of expression. Accordingly, European recognition was not based on an independent provision in the European Convention establishing the right to a healthy environment, but rather on the judicial interpretation of the rights enshrined in the Convention.

Subsection Two: The International Enshrinement of the Right to a Healthy and Sustainable Environment as a Human Right

Recognition of the right to a healthy and sustainable environment has evolved gradually from indirect protection to explicit international recognition as a human right. This has been achieved through the adoption of resolutions by the United Nations Human Rights Council and the United Nations General Assembly that enshrine this right at an international level.

First Branch: The enshrinement of the right by the Human Rights Council under Resolution 48/13 of 2021

When exercising its powers, particularly those relating to the promotion and protection of human rights, the Human Rights Council adopted Resolution 48/13 on 8 October 2021. This was a fundamental step in the process of internationally recognising the right to a clean, healthy and sustainable environment within the human rights system[20]. Through this resolution, the Human Rights Council formally recognised the existence of a human right to a clean, healthy and sustainable environment for the first time within one of the United Nations' principal bodies concerned with human rights. The resolution also links this right to the full enjoyment of human rights, including the rights to life, health, food, water and development[21].

This resolution is significant because it did not merely highlight the incidental relationship between human rights and the environment; it placed the right to a clean, healthy and sustainable environment within the framework of human rights itself. The first paragraph emphasises the importance of this right and its connection with other human rights and existing international law. It also urged states to take measures to ensure and promote this right.

First: The rationale for the international recognition of the right to a clean, healthy and sustainable environment under resolution 48/13.

Through this resolution, the Human Rights Council emphasised the importance of ensuring this right, given its close connection with all other human rights guaranteed by various international and regional instruments. This justifies enshrining and recognising the right to a clean, healthy and sustainable environment within the human rights system. The resolution addresses the relationship between the right to the environment and human rights, and the most important points are as follows:

- The impact of sustainable development and environmental protection on human well-being and the enjoyment and promotion of human rights, including the rights to life, physical and mental integrity, health, an adequate standard of living, adequate food, housing, safe drinking water and sanitation services.

- The significant impact of environmental harm on everyone's human rights, particularly those of vulnerable and disadvantaged groups such as children, women and girls, older persons, and persons with disabilities.

- The impact of environmental degradation, climate change and unsustainable development on the ability of present and future generations to enjoy the right to life.

- The paramount importance of the right to seek, receive and impart information, the right to effective participation in governance and public affairs, the right to participate in environmental decision-making, and the right to effective remedies for the protection of a clean, healthy and sustainable environment.

Secondly, the specific measures set out in Resolution 48/13 aim to ensure and promote the right to a clean, healthy and sustainable environment.

The Human Rights Council reaffirmed the obligations and commitments of states under multilateral environmental agreements, relevant international human rights treaties and other regional human rights instruments. Accordingly, the Council urged States to take certain measures to ensure and promote this right, namely:

- Fully implementing multilateral environmental agreements in accordance with the principles of international environmental law.

- Adopting policies to ensure the right to a clean, healthy and sustainable environment is enjoyed, including policies relating to biodiversity and ecosystems.

- Strengthening international cooperation with other states, the Office of the United Nations High Commissioner for Human Rights, the rest of the United Nations system, other international and regional organisations and agencies, and various stakeholders, including civil society and national human rights institutions, to realise the right to a clean, healthy and sustainable environment.

- continuing to exchange good practices in fulfilling human rights obligations relating to the enjoyment of a clean, healthy and sustainable environment, sharing knowledge and ideas while ensuring that environmental protection efforts fully respect human rights obligations, particularly the principle of gender equality;

- Ensuring that international human rights obligations, including the right to a clean, healthy and sustainable environment, are taken into account when implementing the Sustainable Development Goals.

It should be noted that the Human Rights Council's resolution does not constitute an international treaty creating an international legal obligation in itself. However, the recognition of this right by a United Nations body has clarified its content and strengthened its international recognition. This is particularly significant given that the Human Rights Council invited the United Nations General Assembly to consider the matter through this resolution, thereby paving the way for subsequent recognition of this right at General Assembly level in 2022.

Second Branch: Global recognition of the right under United Nations General Assembly Resolution 76/300 of 2022

The process of recognising the right to a healthy environment internationally within the human rights system culminated in the adoption of Resolution 76/300 by the United Nations General Assembly on 28 July 2022. Entitled "The Human Right to a Clean, Healthy and Sustainable Environment", the resolution was adopted with 161 votes in favour, no votes against, and eight

abstentions. The resolution was adopted with 161 votes in favour, no votes against, and eight abstentions[22]. In adopting the resolution, the General Assembly relied on several instruments, agreements and resolutions, particularly those relating to the Rio de Janeiro Conference and the Human Rights Council, including Resolution 48/13.

This resolution's legal significance lies in the fact that the General Assembly did not merely acknowledge the relationship between the environment and human rights, but explicitly recognised the right to a clean, healthy and sustainable environment as a human right in paragraph 1. Paragraph 2 highlights the connection between this right and other rights, as well as existing international law. Paragraph 3 emphasises the importance of fully implementing international environmental agreements to promote the human right to a clean, healthy and sustainable environment[23].

Through this resolution, the General Assembly set out the reasons for recognising this right. Sustainable development in its three dimensions — social, economic and environmental — as well as environmental and ecosystem protection, contribute to achieving and promoting human well-being and the full enjoyment of all human rights by both present and future generations. Climate change, unsustainable use of natural resources, and pollution of air, soil and water inevitably affect enjoyment of a clean, healthy and sustainable environment, and consequently the effective enjoyment of all human rights. This is particularly true for vulnerable groups, such as women and girls, indigenous peoples, children, older persons and persons with disabilities[24].

The resolution urged states, international organisations, regional organisations and other stakeholders to adopt policies and strengthen international cooperation to ensure the implementation of this right. It also emphasised the importance of protecting individuals who defend human rights in the field of the environment[25].

It should be noted that the legal value of the resolution requires careful consideration. A resolution adopted by the General Assembly does not have the same legal nature as a binding international treaty. Therefore, the recognition contained in the resolution should not be equated with the creation of a new treaty obligation. Nevertheless, the resolution is an important development in the interpretation and international enshrinement of this right, and it may contribute to the evolution of international practice and international human rights law — particularly given the aforementioned regional and judicial recognition process.

The true significance of Resolution 76/300 is that it elevated the right to a healthy environment from indirect protection and fragmented regional recognition to explicit global recognition by the United Nations General Assembly.

Section Two: Legal Principles for the Protection of the Right to a Clean, Healthy and Sustainable Environment

Within the framework of international human rights law, environmental protection has come to impose a set of obligations on states to ensure individuals can enjoy their fundamental rights in the face of increasing environmental risks. The State's role is no longer limited to enacting environmental protection legislation; it also involves taking the necessary measures to prevent environmental harm, mitigate its effects and ensure that it does not unlawfully affect human rights and fundamental freedoms.

John H. Knox, the United Nations Special Rapporteur on human rights and the environment, established a set of framework principles to clarify states' obligations in this area. In 2018[26], he submitted these principles to the Human Rights Council in his report entitled 'Obligations Relating to Human Rights and the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment'.

These obligations vary according to their nature and content. On the one hand, they include obligations relating to the substantive protection that the state must provide for the environment and the associated human rights. On the other hand, they include obligations concerning the procedures and means necessary to ensure public participation, enable individuals to obtain information, defend their rights and access justice.

Accordingly, a distinction can be made between substantive and procedural obligations as two complementary dimensions of the international protection of the right to a healthy environment.

Subsection One: Substantive Framework Principles for the Protection of the Right to a Clean, Healthy and Sustainable Environment

These obligations define the scope of protection that the state must provide in the environmental field. This involves adopting the necessary measures to ensure a safe, clean, healthy and sustainable environment, and to protect individuals from environmental harm that may affect their fundamental rights. In order to ensure the level of protection required for the effective enjoyment of the right to a healthy environment, these obligations extend beyond mere abstention from acts causing environmental damage. They also encompass the adoption of positive measures to prevent environmental risks and regulate activities that could harm the environment or human rights.

These obligations are reflected, in particular, in the following:

First Branch: The obligation to ensure a safe, clean, healthy and sustainable environment

The State has a fundamental substantive obligation to ensure a safe, clean, healthy and sustainable environment. This is because environmental quality is closely linked to the enjoyment of fundamental human rights, particularly the rights to life, health, water, food, housing and an adequate standard of living.

This obligation goes beyond merely recognising the importance of the environment. Rather, it requires the state to adopt legal, administrative, and practical measures capable of preventing environmental degradation, reducing sources of pollution, and

protecting natural resources. The State must also ensure access to clean air, safe and sufficient water, healthy and sustainable food, an environment free from toxic substances, healthy ecosystems, biodiversity and a safe and stable climate[27].

This means that the state must establish effective environmental policies and legislation, regulate activities that could endanger the environment or human rights, and take the necessary preventive measures to avoid environmental damage. Consequently, environmental protection becomes part of the state's general obligation to respect, protect and fulfil human rights[28].

Second Branch: The obligation to respect, protect and fulfil human rights in the environmental field

In this field, the state is obliged to respect, protect and fulfil human rights. The duty to respect requires public authorities to refrain from adopting measures or engaging in activities that may cause environmental harm affecting individuals' enjoyment of their fundamental rights.

The duty to protect requires the state to prevent private actors, particularly institutions and companies, from engaging in activities that lead to human rights violations through environmental damage. This requires the establishment of rules governing economic activities, the implementation of oversight mechanisms, and the imposition of sanctions when environmental obligations are violated.

The duty to fulfil requires the state to take positive measures to enable individuals to enjoy their rights effectively, such as providing a healthy environment, adopting policies to prevent pollution and environmental degradation, and addressing their effects[29].

Third Branch: The obligation to ensure equality and non-discrimination in environmental protection, and to take vulnerable groups into consideration.

The state must ensure that everyone enjoys environmental protection without discrimination, so that no social group bears a disproportionate share of the burden of pollution or environmental degradation. This obligation is particularly important for groups that are more exposed to environmental risks due to their social, economic or other circumstances. Accordingly, equality in this context requires more than treating all persons in the same manner; it necessitates adopting special measures in favour of groups that are more exposed to risks, thereby achieving substantive equality in terms of benefit from environmental protection[30].

Fourth Branch: The obligation to establish and enforce appropriate environmental standards

Substantive environmental protection cannot be achieved merely by enacting legislation. Instead, the state must establish appropriate environmental standards that define the levels of protection to be provided in various areas, such as air and water quality, handling hazardous substances and waste, and industrial activities.

The state must also ensure the practical implementation of these standards by establishing monitoring and inspection bodies to investigate violations and impose appropriate sanctions on entities that cause environmental harm. Therefore, the effectiveness of this obligation is measured not only by the existence of legal rules, but also by the extent to which they are implemented and enforced[31].

Fifth Branch: The Obligation to Provide Special Protection for Groups Most Exposed to Environmental Harm

Environmental justice requires the state to consider the circumstances of individuals and groups who are more vulnerable to environmental harm, and to adopt measures to provide them with additional protection. This is particularly important because certain groups are disproportionately affected by pollution, climate change and the degradation of natural resources. General protection alone is therefore insufficient for these groups, some of which require special attention due to their greater exposure to environmental risks.

While environmental harm affects individuals and communities worldwide, its consequences are more severe for certain groups, including women, children, people living in poverty, Indigenous peoples and members of traditional communities, older people, people with disabilities, national, ethnic, religious or linguistic minorities, and displaced people. Many individuals are vulnerable and exposed to discrimination on more than one ground, such as children living in poverty or indigenous women[32].

Accordingly, the State must take these groups' specific circumstances into account when formulating environmental policies and legislation, work to reduce their exposure to risks, and ensure they effectively benefit from protective measures[33].

Second requirement: The procedural framework principles for the protection of the right to a clean, healthy and sustainable environment.

In addition to obligations relating to environmental protection itself, the State is bound by a set of procedural obligations to ensure the participation of individuals and groups in matters affecting the environment and associated human rights. These obligations are particularly important given that environmental protection cannot be effectively achieved merely by establishing rules and standards. It also requires providing individuals with the means to become aware of environmental risks, participate in relevant decision-making processes, and monitor compliance with environmental obligations by public authorities and private entities. Procedural obligations include, in particular, the following:

First Branch: The obligation to guarantee the right of access to environmental information.

Access to environmental information is one of the most important procedural obligations of the State because individuals cannot exercise their right to participate in environmental decision-making or defend their rights without obtaining the necessary information.

This includes enabling the public to access information concerning sources of pollution, environmental risks and projects and activities that may affect the environment, as well as information relating to the measures taken by the authorities to address these risks. This information must be made available clearly and in a timely fashion[34].

Second Branch: The Obligation to Guarantee Freedom of Expression and Public Participation

Procedural protection of the right to a healthy environment requires enabling individuals and groups to express their opinions on environmental issues and participate in environmental decision-making processes. This also involves empowering women and girls, building their capacity to take on leadership and decision-making roles, and enabling them to participate fully, equally and meaningfully in environmental matters[35].

Participation cannot be effective if it is merely a matter of informing individuals of decisions that have already been taken. Instead, participation must take place at a stage that allows individuals to express their opinions and genuinely influence the decision-making process. Public participation is therefore an essential means of achieving environmental democracy and ensuring that the interests of those affected by environmental projects and policies are taken into account[36].

Third Branch: The Obligation to Protect Human Rights and Environmental Defenders

The state is obliged to provide a safe and supportive environment for individuals and groups involved in activities related to defending human rights and the environment. This includes protecting them against threats, harassment, violence and any acts of retaliation resulting from their environmental activities[37].

Such protection is particularly important because environmental defenders play a vital role in exposing environmental violations and alerting the authorities and society to risks to the environment and human rights.

Fourth Branch: The obligation to conduct environmental impact assessments of proposed projects and activities

An environmental impact assessment is one of the most important preventive measures used by the state before authorising projects and activities that may affect the environment. The aim of this assessment is to identify the potential environmental impacts of a project, evaluate the risks arising from it and propose measures to avoid or mitigate any harm[38].

The importance of this obligation lies in enabling the state to intervene before harm occurs rather than addressing the consequences after they have arisen. The potential impact of projects on human rights should also be considered, not just their environmental impact in the narrow sense.

Fifth Branch: The Obligation to Guarantee Access to Justice and Remedies

Legal protection of the right to a healthy environment is incomplete unless individuals whose rights have been violated due to environmental harm can access effective justice and remedy mechanisms.

This includes enabling affected individuals to take legal action, obtain an appropriate investigation, halt ongoing violations, hold those responsible to account, and obtain compensation or other forms of reparation where appropriate[39].

Access to justice is therefore the ultimate safeguard of environmental rights, as it transforms environmental obligations from mere legal rules into enforceable rights.

Finally, it can be said that substantive and procedural obligations complement each other. Substantive obligations determine the content of the protection that the state must provide, while procedural obligations determine the means and mechanisms that enable individuals to participate in environmental protection and defend their rights.

Substantive obligations are reflected in the establishment of effective environmental standards, the prevention of pollution and the protection of natural resources, while procedural obligations are reflected in the enabling of individuals to obtain information, participate in environmental decision-making and seek legal redress. Accordingly, each type complements the other: sound environmental standards are insufficient without participation and oversight mechanisms, and participation and access to information are ineffective without a State's genuine commitment to achieving an appropriate level of environmental protection.

Conclusion:

This study shows that the international recognition of the right to a clean, healthy and sustainable environment is an important step forward in the protection of human rights. However, this recognition does not constitute the ultimate goal, but rather provides a foundation for the continued development of a more integrated and effective legal framework. Nevertheless, this recognition's true value remains linked to its ability to progress from international principles and guidelines to enforceable rules, and to effective institutional and judicial guarantees.

The fundamental challenge is therefore no longer limited to establishing the link between the environment and human rights, or affirming the importance of recognising this right. Instead, the challenge lies in determining the scope of the legal protection it provides, ensuring compliance with relevant international legal obligations, and establishing effective mechanisms

for preventing and remedying environmental harm.

Therefore, in order to strengthen the right to a clean, healthy and sustainable environment, there must be continued coordination between international human rights law and international environmental law. Furthermore, there must be intensified international and national efforts to ensure an environment that safeguards human dignity and environmental justice, and protects the interests of present and future generations.

First: Findings

The study has yielded a number of findings, the most important of which are summarised below:

- The development of the basis for the international protection of the right to a healthy environment. Protection has shifted gradually from a reliance on traditional rights, such as the right to life, health and privacy, towards the explicit recognition of the right to a clean, healthy and sustainable environment within the United Nations system.
- The cumulative nature of international recognition: Recognition of this right did not arise from a single resolution, but rather resulted from continuous developments in international human rights and environmental law, supported by regional instruments, judicial decisions and national practices.

The normative significance of resolutions 48/13 and 76/300

- These two resolutions have strengthened the status of the right to a healthy environment within the United Nations system. However, their adoption does not make them binding international treaties in themselves, nor does it eliminate the need to identify the sources of legal obligations applicable to each state.
- The complementarity of environmental protection and human rights: The effective enjoyment of several fundamental rights is closely linked to environmental integrity, while environmental protection benefits from the procedural and substantive guarantees established under international human rights law.
- The multiplicity of obligations arising from the protection of the right to a healthy environment: States are responsible not only for refraining from causing environmental harm, but also for taking positive measures to prevent it, regulating the activities of private actors, monitoring sources of pollution and ensuring access to information, public participation and justice, in accordance with the relevant legal obligations.
- The importance of the procedural dimension of the right to a healthy environment: Access to environmental information, public participation in decision-making and access to justice are essential for ensuring effective environmental protection, as substantive protection is difficult to achieve in the absence of mechanisms enabling individuals and groups to claim their rights.
- The insufficiency of international recognition alone: The practical effectiveness of the right depends on its incorporation into national legislation and the establishment of appropriate monitoring and judicial mechanisms, the enforcement of judgements and remedial measures, and the addressing of disparities in exposure to environmental harm.

Second: recommendations

Based on the findings, we propose the following:

- Strengthening the international legal framework for the right to a healthy environment. This can be achieved by continuing to develop international standards that define its content, scope and obligations, while clarifying the relationship between international recognition of the right and the sources of binding obligations for states.
- Activating the role of international and regional human rights mechanisms. This can be achieved by strengthening the monitoring of the implementation of environmental obligations, developing monitoring, reporting and recommendation mechanisms, and drawing on relevant judicial decisions to establish standards for effective protection.
- Incorporating the right to a clean, healthy and sustainable environment into national legislation. This can be achieved by explicitly enshrining this right wherever required by the constitutional and legal system and by aligning environmental laws with human rights guarantees and applicable international obligations.
- Strengthening procedural safeguards for environmental protection: This can be achieved by guaranteeing the right of access to environmental information, expanding public participation in decisions affecting the environment and facilitating recourse to courts and competent bodies to challenge decisions that harm the environment.
- Strengthening prevention, monitoring and accountability: This can be achieved by developing legislation governing activities that pose environmental risks, implementing environmental impact assessment mechanisms, improving monitoring of sources of pollution, and ensuring accountability and reparation for harm in accordance with applicable legal rules.
- Providing special protection for groups most exposed to environmental risks: This can be achieved by taking into account the circumstances of children, older persons, persons with disabilities, and communities whose livelihoods depend on natural resources, and ensuring that vulnerable groups do not bear disproportionate environmental burdens.
- Strengthening the role of national human rights institutions and civil society: This can be achieved by supporting their capacity to monitor environmental violations related to human rights, raise legal awareness, provide assistance to those affected, and contribute to the evaluation of environmental policies.

- Developing international cooperation in the environmental field: This can be achieved by enhancing the exchange of information, technology and expertise, and by providing necessary support to states that are struggling to fulfil their environmental obligations in accordance with the relevant rules and principles of international law.
- Narrowing the gap between recognition and implementation: This can be achieved by establishing measurable indicators to assess environmental quality and the extent to which related rights are enjoyed, publishing periodic reports on progress achieved, and linking environmental policies to accountability and continuous evaluation mechanisms.

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Notes

[1] - The Universal Declaration of Human Rights was adopted pursuant to United Nations General Assembly Resolution 217 A (III), dated 10 December 1948.

[2] - The International Covenant on Civil and Political Rights was adopted pursuant to United Nations General Assembly Resolution 2200 A (XXI), dated 16 December 1966, and entered into force on 23 March 1976.

[3] - See Article 12, paragraph 2(b) and (c), of the International Covenant on Economic, Social and Cultural Rights, adopted pursuant to United Nations General Assembly Resolution 2200 A (XXI), dated 16 December 1966.

[4] - Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), E/C.12/2000/4, 11 August 2000, paras. 4, 11 and 15.

[5] - Human Rights Committee, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights: The Right to Life, UN Doc. CCPR/C/GC/36, 3 September 2019, para. 62.

[6] - United Nations, Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), Stockholm, 16 June 1972, Principle 1.

[7] - United Nations, Rio Declaration on Environment and Development, Rio de Janeiro, 1992, Principle 10.

[8] - African Charter on Human and Peoples' Rights, adopted on 27 June 1981 and entered into force on 21 October 1986 at the 18th Conference of Heads of State and Government in Nairobi, Kenya.

[9] - American Convention on Human Rights, adopted in San José, Costa Rica, on 22 November 1969, and entered into force on 18 July 1978.

[10] - See Article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), 1988.

[11] - Inter-American Court of Human Rights, Advisory Opinion OC-23/17, The Environment and Human Rights, 15 November 2017, Series A No. 23.

[12] - Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), 2018, Art. 4(1).

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[16] - Ibid.

[17] - European Court of Human Rights, López Ostra v. Spain, Application No. 16798/90, Judgment of 9 December 1994, Series A No. 303-C, § 51.

[18] - European Court of Human Rights (Grand Chamber), Öneryıldız v. Turkey, Application No. 48939/99, Judgment of 30 November 2004, ECHR 2004-XII, §§ 71–74 and 89–90.

[19] - European Court of Human Rights (Grand Chamber), Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Application No. 53600/20, Judgment of 9 April 2024, §§ 519–520.

[20] - Human Rights Council, The Human Right to a Clean, Healthy and Sustainable Environment, Resolution 48/13, UN Doc. A/HRC/RES/48/13, 8 October 2021.

[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, UN Doc. A/HRC/37/59, 24 January 2018.

[22] - United Nations General Assembly, The Human Right to a Clean, Healthy and Sustainable Environment, Resolution A/RES/76/300, adopted on 28 July 2022, 97th Plenary Meeting.

[23] - United Nations General Assembly, The Human Right to a Clean, Healthy and Sustainable Environment, Resolution A/RES/76/300, adopted on 28 July 2022, 97th Plenary Meeting.

[24] - Ibid., pp. 2–3.

[25] - Ibid., pp. 3–4.

[26] - United Nations 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: Framework Principles on Human Rights and the Environment, UN Doc. A/HRC/37/59, 24 January 2018, Framework.

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[28] - See Principle 1 of the Framework Principles on Human Rights and the Environment, op. cit., p. 8.

[29] - See Principle 2 of the Framework Principles on Human Rights and the Environment, op. cit., pp. 8–9.

[30] - See Principle 3 of the Framework Principles on Human Rights and the Environment, op. cit., pp. 9–10.

[31] - See Principles 11 and 12 of the Framework Principles on Human Rights and the Environment, op. cit., pp. 16–17.

[32] - See 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/73/188.

[33] - See Principle 14 of the Framework Principles on Human Rights and the Environment, op. cit.

[34] - See Principle 7 of the Framework Principles on Human Rights and the Environment, op. cit.

[35] - United Nations General Assembly, The Human Right to a Clean, Healthy and Sustainable Environment, Resolution A/RES/76/300, op. cit., p. 3.

[36] - See Principle 8 of the Framework Principles on Human Rights and the Environment, op. cit.

[37] - See Principle 4 of the Framework Principles on Human Rights and the Environment, op. cit.

[38] - See Principle 8 of the Framework Principles on Human Rights and the Environment, op. cit.

[39] - See Principle 10 of the Framework Principles on Human Rights and the Environment, op. cit.