

## A universal right to a healthy environment

A landmark UNHRC resolution has recognised the human right to a safe, clean, healthy and sustainable environment, endorsing the broad recognition of the link between human rights and the environment. The right to a healthy environment is already enshrined in numerous national and regional instruments. Although non-binding, the resolution can spur change, with the Council of Europe already taking the first steps in this regard.

### Legal recognition of the right to a healthy and sustainable environment

In a [resolution](#) of 8 October 2021, the UN Human Rights Council (UNHRC) recognised, with 43 votes in favour and 4 abstentions, that access to a healthy and sustainable environment is a universal right. Although non-binding, this resolution could be a first step towards filling a significant gap in international law.

### Legal recognition in the UN treaties

International human rights law does not guarantee the right to a clean and safe environment. UN human rights treaties – most of which were adopted before environmental protection came under the focus of international attention – do not explicitly endorse this right, but some make indirect references to it. The 1966 [International Covenant on Economic, Social and Cultural Rights](#) provides in its Article 12 for the right to the highest attainable standard of physical and mental health, and calls on states parties to take steps to improve all aspects of **environmental** and industrial **hygiene**. The 1989 [Convention on the Rights of the Child](#) provides that states parties shall take appropriate measures to combat disease and malnutrition through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of **environmental pollution** (Article 24). UN human rights treaty bodies, through their case law or other [declarations](#), have driven a 'greening' of human rights by arguing that many human rights, such as the right to life, private life, health, water and property, depend on a healthy environment.

### Legal recognition in regional human rights and environmental treaties

The link between human rights and the environment, including climate change

This important link has been [recognised](#) by the [UN](#) human rights bodies (e.g. the Human Rights Council) and the treaty bodies, and has been embedded in the UN special procedures. This link works in two directions: 1) environmental protection is instrumental to the enjoyment of a number of human rights (as explained above), and 2) the exercise of human rights (particularly procedural rights such as access to information, public participation and access to effective judicial and administrative proceedings, including redress and remedy) is [vital](#) for effective environmental protection – an approach upheld most staunchly by the [Aarhus Convention](#). The 1972 [Stockholm Declaration](#) on the human environment was the first international document to recognise the link between human rights and the environment. The [Paris Climate Agreement](#) (2015) is the [first](#) binding multilateral environmental agreement to include an explicit human rights reference. Its preamble acknowledges that states 'should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights'. The Glasgow [Climate Pact](#) adopted at COP26 reaffirms these obligations.

Recognition under international regional treaties is stronger but remains unequal. In total, over [120 states](#) are parties to at least one binding regional treaty proclaiming the right to a healthy environment. Among these, the Aarhus Convention in Europe stands out through its focus on procedural rights (rights of access to information, public participation, and access to justice with respect to the environment). The [European Convention on Human Rights](#) does not contain any [provisions](#) referring to a right to a healthy environment, but on 29 September 2021, the Parliamentary Assembly of the Council of Europe [recommended](#) the drafting of an additional protocol in this respect. [Article 37](#) of the Charter of Fundamental Rights of the European Union provides that a high level of environmental protection must be integrated in EU policies, but does not recognise an individual right to a healthy environment.

**Table 1 – Relevant international regional agreements**

Regional conventions	<a href="#">Aarhus Convention</a> (1998)	<a href="#">African Charter on Human and Peoples' Rights</a> (1991)	<a href="#">Arab Charter of Human Rights</a> (2004)	<a href="#">Protocol of San Salvador</a> (1969)
States parties	<a href="#">46</a> (plus the EU)	<a href="#">54</a>	16	<a href="#">16</a>
Relevant provisions	<b>Preamble:</b> 'every person has the right to live in an environment adequate to his or her health and well-being'	<b>Article 24:</b> 'all peoples shall have the right to a general satisfactory environment favorable to their development'	<b>Article 38:</b> 'every person has the right [...] to a healthy environment'	<b>Article 11:</b> 'everyone shall have the right to live in a healthy environment'

### In national constitutions and law

According to a 2019 [report](#) by the UN Special Rapporteur on Human Rights and the Environment, 'There are 110 States where this right enjoys constitutional protection...[and] 101 States where this right has been incorporated into national legislation...In total, more than 80 percent of States Members of the United Nations (156 out of 193) [including those bound by a treaty] legally recognize the right to a safe, clean, healthy and sustainable environment'. Moreover, 19 out of 27 EU countries have enshrined this right in their constitutions (some only implicitly) and 17 in their national law. Austria, Denmark, Germany, Luxembourg, Malta, Netherlands, Poland, Sweden have done neither, but are parties to the Aarhus Convention.

### The landmark UNHRC resolution on the right to a healthy environment

The October 2021 resolution was the result of a years-long campaign by numerous civil society [organisations](#) and other stakeholders. The process was also driven by a 2018 joint [report](#) by the former and current UN Special Rapporteurs for Human Rights and the Environment, John Knox (2012-2018) and David Boyd (2018-) respectively, which made the case for the UN 'to formally recognize the human right to a healthy environment'. The resolution asks states to adopt policies for the enjoyment of such a right, including with respect to biodiversity and ecosystems, and lists climate change in its recitals as one of the major obstacles to the enjoyment of a healthy and sustainable environment. The central provision 'recognizes the right to a safe, clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights'. The resolution also highlights the link with other rights.

Though not legally binding, the resolution signals the UN member states' strong political commitment to such a right and could be a [catalyst](#) for change. It is expected to produce positive environmental results by raising public awareness and improving accountability and [enforcement](#). In particular, it can provide a strong basis for [environmental litigation](#) in courts. Across the world, the link between human rights and the environment and climate is increasingly being invoked before the courts. Cases in the EU include the [Urgenda case](#) in the Netherlands, [Affaire climat](#) in Belgium and [L'affaire du siècle](#) in France.

Though the resolution does not provide a **definition of the new right**, a 2019 UNHRC [report](#) identified the 'vital elements' that could be part of such a definition: the right to: clean air, clean water and adequate sanitation, healthy and sustainable food, a safe climate, and healthy biodiversity and ecosystems. Who are the new right's holders and duty bearers? [Some](#) argue that the holders of this new right 'are not only the present generation but also future generations'. States are the primary duty bearers as regards human rights; therefore, they have a positive [obligation](#) 'to mitigate climate change and ensure that all persons have the necessary capacity to adapt to its consequences', including with respect to populations outside their territories. In line with the Guiding Principles on Business and Human Rights, businesses should be accountable for the realisation of such a right too. [Experts](#) have warned about the [difficulties](#) in codifying such a right into law.

### European Parliament position

The European Parliament, in its [June 2021 resolution](#) on the EU biodiversity strategy for 2030, considers that the right to a healthy environment should be recognised in the EU Charter and that the EU should take the lead on the international recognition of such a right.

