



# GLION HUMAN RIGHTS DIALOGUE 2022

THE RIGHT TO A CLEAN, HEALTHY, AND SUSTAINABLE  
ENVIRONMENT – WHAT DOES IT MEAN FOR STATES, FOR  
RIGHTS-HOLDERS, AND FOR NATURE?



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**THE RIGHT TO A  
CLEAN, HEALTHY,  
AND SUSTAINABLE  
ENVIRONMENT –  
WHAT DOES IT MEAN  
FOR STATES, FOR  
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AND FOR NATURE?**





The eighth Glion Human Rights Dialogue (Glion VIII), organised by the Governments of Switzerland and Liechtenstein, and the Universal Rights Group (URG), in partnership with the Permanent Missions of Fiji, the Marshall Islands, Mexico, and Thailand, was held on 16-17 May 2022 and focused on the topic:

*The right to a clean, healthy, and sustainable environment - what does it mean for States, for rights-holders and for nature?*

The Glion VIII retreat was preceded by three preparatory policy dialogues.

'Our war on nature has left the planet broken,' said UN Secretary-General Antonio Guterres in December 2020, at the launch of a new UN Environment Programme (UNEP) report<sup>1</sup> laying out a programme to address the three 'interwoven' crises of climate change, pollution, and biodiversity loss. In particular, the report argued that the 'piecemeal'<sup>2</sup> approaches of the past have not worked, because they have ignored the multiple links between environmental, development and human rights challenges. Instead, science and policymakers should 'open a pathway'<sup>3</sup> that seeks to promote and protect human rights and achieve the SDGs by 2030 and a carbon-neutral world by 2050, 'while bending the curve on biodiversity loss and curbing pollution and waste.'

Recognition of the close inter-relationship between human life, dignity, and rights, and the environmental, biodiversity and climate crises, and a determination to address all these issues in an integrated manner, are also central to the Secretary-General's 2020 'Call to Action' on human rights,<sup>4</sup> and his recent report presenting 'Our Common Agenda.'<sup>5</sup>

## **The human right to a clean, healthy, and sustainable environment**

On 8 October 2021, the Human Rights Council adopted resolution 48/13 on 'the human right to a clean, healthy, and sustainable environment' by registered vote, with 43 in favour and 4 abstentions. With resolution 48/13, which was co-sponsored by 78 UN member States, the Council:

*Recognize[d] the right to a clean, healthy, and sustainable environment as a human right that is important for the enjoyment of human rights.*

The resolution also 'invite[d] the General Assembly to consider the matter.'

Taking its lead from this invitation, on 28 July 2022 the General Assembly adopted resolution 76/300 (by registered vote - 161 in favour and 8 abstentions) recognising the right to a clean, healthy, and sustainable environment.<sup>6</sup>

During negotiations on the draft Council resolution, delegations raised several important questions, including: what is the scope and content of such a newly recognised right; what does it mean for States at international and national levels; should it be the Council or the General Assembly that takes the lead in recognising new rights; and how could a right to a healthy environment be claimed by rights-holders around the world? Notwithstanding the ultimate adoption of resolution 48/13, many delegations felt that there had not been sufficient time during the open informal consultations to fully consider these questions.

Against this background, and on the occasion of the 50th anniversary of the adoption of the Stockholm Declaration on the Human Environment, Glion VIII and its preparatory policy dialogues sought to provide an informal and neutral space for all key stakeholders (including governments, UN officials, independent experts, environmental human rights defenders, and civil society) to consider these important questions in more detail, as well as the future challenges and opportunities linked to the right to a clean, healthy, and sustainable environment.

As with all Glion Human Rights Dialogues, the informal and inclusive discussions at Glion VIII, held under the Chatham House rule, aimed to generate new thinking and ideas, enhance mutual understanding, and bridge differences. Finally, in focusing on areas where a 'rights-based approach' could bring important benefits, the retreat aimed to complement existing initiatives in this area. In this context, it adopted a practical approach premised on helping States use human rights obligations, commitments, and principles to improve national policies and practices.

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## POLICY DIALOGUES AHEAD OF GLION VIII

Ahead of Glion VIII, URG co-convened a series of three informal policy dialogues with supportive State delegations in Geneva. These policy dialogues allowed for early consideration of, and an exchange of views on, what the right to a clean, healthy, and sustainable environment means for States, for rights-holders and for nature. Key conclusions, ideas and proposals were fed into the Glion VIII retreat.

The three informal policy dialogues addressed the following topics:

- ‘What is the right to a clean, healthy, and sustainable environment?’ Hosted by the Permanent Mission of Mexico, 17 February 2022, Geneva.
- ‘What has the right to a clean, healthy, and sustainable environment meant where it is already recognised, at national and/or regional levels?’ Hosted by the Permanent Missions of the Republic of Fiji and of the Republic of the Marshall Islands, 26 April 2022, Geneva.
- ‘What does UN recognition of the right to a clean, healthy, and sustainable environment, mean for different stakeholders? What approaches might be taken at international and national levels following UN recognition?’ Hosted by the Permanent Mission of Thailand, 27 April 2022, Geneva.

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## REPORT OF THE EIGHTH GLION HUMAN RIGHTS DIALOGUE

This report on Glion VIII is divided into three parts.

Part one looks at questions around the **scope, international legal meaning, and human rights guarantees of the right to a clean, healthy, and sustainable environment**.

Part two provides reflections on the **impact of the right to a clean, healthy, and sustainable environment, where it is already recognised at the national level, in domestic environmental/climate laws, policies, and jurisprudence, as well as on the protection of environmental human rights defenders (EHRDs)**.

Finally, part three considers the various **implications of UN recognition of the right to a clean, healthy, and sustainable environment for relevant stakeholder groups, including governments, civil society, businesses, UN Country Teams, and international and regional human rights mechanisms**.

Each part of the report includes a brief situation analysis, followed by a summary of the main issues discussed and ideas put forward at Glion VIII.

The report is an informal document summarising (in a non-attributable manner) some of the key ideas developed during the Glion retreat, based in-turn on the three preparatory policy dialogues. The document does not represent the positions of Switzerland, Liechtenstein, Fiji, Iceland, the Marshall Islands, Mexico, Thailand, nor of any of the participants, but is rather a non-exhaustive collection of ideas generated during those meetings.





# WHAT IS THE RIGHT TO A CLEAN, HEALTHY, AND SUSTAINABLE ENVIRONMENT?





## WHERE ARE WE TODAY?

On 8 October 2021, the Human Rights Council adopted resolution 48/13 on 'the human right to a clean, healthy, and sustainable environment.' With resolution 48/13, which was co-sponsored by 78 UN member States, the Council:

*Recognize[d] the right to a clean, healthy, and sustainable environment as a human right that is important for the enjoyment of human rights.*

The resolution also 'invite[d] the General Assembly to consider the matter,' which it subsequently did on 28 July 2022 with the adoption of resolution 76/300, further acknowledging this newly recognised right.

According to proponents of these historic steps, UN recognition of the right to a clean, healthy, and sustainable environment will help better protect individuals from the impacts of environmental degradation, and will empower rights-holders by allowing them to assert this right to press for improved national environmental laws and policies, and (especially in the case of environmental human rights defenders) to campaign against unsustainable (i.e., environmentally or socially harmful) economic policies and projects. Proponents also expect recognition of the right to a healthy environment to catalyse and act as a compass for further developments at national (e.g., more States recognising the right in domestic law), regional (e.g., recognition of the right in more regional human rights instruments) and international levels (e.g., contributions to clarify the scope and content of the right by Special Procedures and Treaty Bodies). As recognised by the then-High Commissioner for Human Rights, Michelle Bachelet, in a statement issued immediately after the adoption of resolution 48/13, recognition also sends out an important political signal of the international community's direction of travel: 'a springboard to push for transformative economic, social and environmental policies that will protect people and nature.'

Notwithstanding these hopes, during negotiations on the draft resolution in Geneva, delegations raised a number of important questions. Many of these remain pertinent even after the adoption of the twin resolutions by the Council and the General Assembly as they have important implications for the key question: what next?

## KEY QUESTIONS

Participants at Glion VIII were encouraged to consider, *inter alia*, the following questions:

1. What is the scope and content of the right to a clean, healthy, and sustainable environment?
2. What is the international legal meaning of a right to a clean, healthy, and sustainable environment?
3. Which parts/aspects of the right to a clean, healthy, and sustainable environment are included in existing, legally binding human rights guarantees?

## ISSUES FOR REFLECTION AND OPPORTUNITIES FOR CHANGE

### Creation of new legal obligations?

- There was broad agreement that recognition of the right to a clean, healthy, and sustainable environment through relevant UN resolutions **does not create new international legal obligations**. Rather, the Council's resolution represents a political declaration of this newly recognised right but leaves decisions on the exact scope and content of the right, and on the corresponding international legal obligations of States, to future intergovernmental negotiations.
- While not disagreeing with this point, some speakers argued that the Council's (and, later, the General Assembly's) political recognition of the right to a clean, healthy, and sustainable environment does serve to **reaffirm and strengthen States' existing obligations** under international human rights and environmental law.
- In that regard, one participant referred to the right to a clean, healthy, and sustainable environment as an '**umbrella right**,' bringing together, under a single canopy, various



important obligations under international human rights and environmental law. Many of these legal obligations are set out, he said, in the Framework Principles on Human Rights and the Environment, which provides 'authoritative guidance on existing obligations that make-up the right.'<sup>7</sup>

- Another speaker argued that recognition by the General Assembly would 'reach the threshold for the right to become binding under customary international law.' There was, however, considerable **push back** against this argument, with participants stating that there is 'insufficient *opinio juris*' (i.e., the belief by States that an action is carried out as a legal obligation) and insufficient 'consistency in the manner in which States understand and apply this right' for a General Assembly resolution to create customary law obligations.

- Some participants pointed out that, notwithstanding this situation at international-level, **over 150 States** are already obliged to respect, protect, and fulfil the right to a clean, healthy, and sustainable environment under national law (including, in many cases, constitutional law) or by being party to relevant regional human rights instruments. Thus, it was argued, there is already **considerable clarity** as to what future State obligations in the context of the right to a clean, healthy, and sustainable environment might look like. Others, however, disagreed with this last point, arguing that the formulation, scope, content, interpretation, and application of the right varies enormously depending on the relevant national or regional context.

- This debate in turn led some to argue that an important role and value of future international discussions on the right to a clean, healthy, and sustainable environment would be to identify and build consensus around '**common denominators**' of the right where it is already recognised at national level.

## Clarifying the scope and content of the right, and corresponding State obligations

- These initial discussions led to a further debate on **how to best to clarify the scope and content** of the right to a clean, healthy, and sustainable environment, and how to best to establish the corresponding legal obligations of States.

- Several participants argued that it is important, for purposes of legal clarity - to make this newly recognised right truly meaningful for rights-holders and for the environment - to begin '**an iterative process of multilateral negotiation.**' The right to a clean, healthy, and sustainable environment 'must be more than the sum of the parts of the right where it is already recognised through national law or regional instruments,' and must also be more than a simple referral to the Framework Principles.

- Others agreed with this point, stating that while the jurisprudence of national or regional courts, for example, or the work of Special Procedures or Treaty Bodies, can certainly help inform an international process to clarify the right's scope and content (and the obligations of States), in the end it is crucial 'if States are to sign up to new international legal obligations' that such a process is **State-led**. In other words, the scope and content must be set out through intergovernmental negotiations. Others agreed and noted that such an inclusive inter-governmental process is also important for reasons of 'democratic accountability.'

- This led to further discussions over what should be the outcome of such a process. Building on the earlier discussion over whether a Council or General Assembly resolution creates obligations under customary international law (the overall view being that they do not), most participants agreed that the only way to create legally binding obligations, and for States to eventually be willing to accept those obligations, is through **intergovernmental negotiations on a new international treaty**. While there was wide support for this idea, several speakers noted that the sensitive subject matter, the current state of multilateral diplomatic relations, and the need to move forward consensually, means 'such an undertaking will necessarily be a long-term project.'

- Not everyone agreed with this reading, however. Some argued that the realisation of the right to a clean, healthy, and sustainable environment 'cannot wait for long intergovernmental negotiations over a new treaty.' Instead, they predicted (and hoped) that the right would be **given legal meaning through the work of Treaty Bodies, Special Procedures, and national and regional courts.**



## Scope and content

- Irrespective of the process to define the scope and content of the right to a clean, healthy, and sustainable environment, participants remarked that, in practice, **much of the content has already been defined** – through the work of the Special Rapporteur on human rights and environment (especially his Framework Principles), and the jurisprudence of national and regional courts.

- In that regard, it was noted that the content of the right can be divided between its **procedural and substantive aspects**. While the procedural elements are less contentious, there is an important ongoing debate on the right's **substantive elements**. One participant explained that there are two main reasons for this. First, it is both important and difficult (as well as sensitive) to draw the direct causal links necessary to demonstrate that a certain environmental harm leads to a particular human rights violation. Second, there is concern among some large developing countries/emerging economies that substantive elements of the right might come into conflict with State sovereignty (e.g., over natural resources) and the right to development. Some representatives of these States made clear that this issue would constitute a 'red line' for them

in any future intergovernmental negotiations.

- On the other hand, the **procedural aspects** of the right are, it was noted, broadly accepted. This involves the 'greening' of existing human rights law so that existing obligations are applied to environmental issues. Participants pointed, for example, to the obligation to respect and protect the rights to freedom of expression and peaceful assembly in relation to environmental matters, and the rights to access environmental information, to participate in environmental decision-making, to access justice, and to seek effective remedies for violations of human rights relating to the environment.

- Likewise, there was no opposition at Glion VIII to the idea that the core human rights principle of **non-discrimination** should be applied to environmental standards and policies. One participant noted, for example, that the human rights impacts of pollution fall disproportionately on certain groups, such as indigenous peoples (e.g., 'the emblematic Texaco case in Ecuador').

- Finally, on this broad issue, several participants stressed the **duty to consult and protect environmental human rights defenders** as critical components of the right, and argued, by extension, that State failure to do so would constitute a violation of the right to a clean, healthy, and sustainable environment.

- Another point raised during discussions was that the right to a clean, healthy, and sustainable environment has the potential to shift the emphasis of international human rights law from a largely remedial function (i.e., focused on providing remedy and redress for harm caused) towards a more **preventative approach** (which ‘has always been central to international environmental law’). In this regard participants discussed the importance of **due diligence** as a standard of conduct required for the State to both respect the right to a clean, healthy, and sustainable environment, and to protect rights-holders from harm caused by the actions of private persons or entities. In other words, as one participant argued: ‘the right to a healthy environment injects the precautionary principle into human rights.’ Another speaker agreed with this point, and further argued that the scope of the right should also encompass the principle of non-regression in environmental matters.

- Participants suggested that the right to a clean, healthy, and sustainable environment is both an **individual right** (e.g., right to fair trial), and a **collective right** to be enjoyed by certain groups of people (e.g., environmental human rights defenders or indigenous peoples).

- This led to a further discussion on whether **future generations** should be considered rights-holders in the context of the right to a clean, healthy, and sustainable environment. Recent decisions by the Committee on the Rights of the Child (e.g., its communication on intergenerational equity) and the Supreme Court of Germany were highlighted as suggesting that the answer to this question is ‘yes.’

- Some voiced concerns regarding the **justiciability** of the right (i.e., the ability of aggrieved individuals to make claims before courts). Others responded that this is the central issue for the on-the-ground impact of the right, and that as a result the right must be justiciable. In that regard, they highlighted ‘the recent decision of the Inter-American Court of Human Rights, which made clear that the right to a clean, healthy, and sustainable environment in the San Salvador Protocol is indeed justiciable.’

- Linked with the question of justiciability, several speakers raised the issue of **extraterritoriality** – i.e., whether an individual or group can hold a third country (i.e., not their home State) accountable for human rights harms resulting from environmental damage caused by the actions or inactions of that State. One speaker noted that this issue had been

repeatedly raised during Council debates on human rights and climate change, and human rights and environment, and has often seen climate-vulnerable States and other developing countries lined up against developed States. Another argued that considering pollution, climate change and other serious environmental harms are often transboundary in nature, it will be imperative for the scope of the right to a clean, healthy, and sustainable environment to include an extraterritorial dimension. Others strongly disagreed.

- While there was – unsurprisingly – little agreement on this issue at Glion VIII, there was a greater convergence of views on the importance of **international cooperation** as a key dimension of the scope and content of the right to a clean, healthy, and sustainable environment. As some State representatives noted, it would be almost impossible for Small States to effectively protect the right in the absence of international cooperation to address the three global environmental crises of pollution, biodiversity loss, and climate change.

## Category of rights

- There was some debate, at Glion VIII, over whether the right to a clean, healthy, and sustainable environment can be considered an **economic, social, and cultural right** (and thus subject to progressive realisation), or a **civil and political right** (and thus subject to immediate realisation). Participants also debated whether the right should be considered an absolute or qualified right (i.e., whether derogations are possible), and whether it is an individual or a collective right.

- Some argued that the right can only ever be subject to **progressive realisation**, comparing it to the right to water and sanitation, others noted that even economic, social, and cultural rights have core elements that should be realised immediately (e.g., non-discrimination principles).

- Two speakers suggested that the right to a clean, healthy, and sustainable environment could be considered the UN system’s first ‘**hybrid right**,’ displaying characteristics of both civil and political rights, and economic, social, and cultural rights. Another cautioned against attempts to categorise the right, which they described as an ‘inherently limiting approach,’ urging States to instead ‘embrace the complexity and constantly evolving nature’ of the right.



## ‘Normative cascade’

- It was repeatedly argued, during discussions at Glion VIII, that irrespective of whether Council or General Assembly resolutions create new legal obligations for States (and the overall view was they do not), such resolutions have enormous political value, creating, as one speaker put it, a **‘normative cascade.’** By this he meant that the UN’s decision to recognise the right to a clean, healthy, and sustainable environment would have – indeed, is already having – considerable influence on legal and policy developments at international, regional, and national levels. As one speaker put it: ‘UN decisions, including its resolution on the right to a healthy environment, retain a powerful ability to inspire politicians, jurists, UN officials, civil society activists, academics and others around the world.’
- Many examples were shared to show that such as ‘normative cascade’ is already in operation following the adoption of the Council’s resolution. At the UN level, the inclusion of the right to a healthy environment in Our Common Agenda has coincided with a growing interest, among UN Resident Coordinators, in

how to integrate the right into country programming. Likewise, some speakers noted an uptick in interest among bilateral donor States in how to leverage official development assistance (ODA) to help realise the right to a healthy environment. In another example, even prior to the adoption of resolution 48/13, the right had become an increasingly important legal base for climate and environmental litigation cases, and – according to various participants at Glion VIII – that importance will only increase given the propensity of national and regional judges to interpret the law in light of UN resolutions (especially where their country has voted in favour or cosponsored), Treaty Body general comments, etc. Others drew attention to the influence of UN recognition, especially if the General Assembly were to follow the lead of the Council, on States, especially those that have not yet recognised the right. It was noted, for example, that Malaysia had used its decision to vote in favour of resolution 48/13 as the basis of its decision to recognise the right at national level. Turning to civil society, it was noted that the right to a clean, healthy, and sustainable environment is increasingly acting as a ‘bridge’ between environmental and human rights activists – helping strengthen the work of both communities.



**WHAT HAS THE RIGHT TO  
A CLEAN, HEALTHY, AND  
SUSTAINABLE ENVIRONMENT  
MEANT WHERE IT IS ALREADY  
RECOGNISED AT NATIONAL  
AND/OR REGIONAL LEVELS?**





## WHERE ARE WE TODAY?

When it comes to understanding the meaning of the right to a clean, healthy, and sustainable environment, including its legal implications, it is important to look at countries that have already recognised and implemented the right. A debate on how the right has been implemented, what impact implementation has had, and what challenges have been faced, can further contribute to understanding what UN recognition of the right might mean in practice.

According to a report by the Special Rapporteur on human rights and the environment,<sup>8</sup> the right to a healthy environment is already recognised, in different formulations, by over 150 UN member States through national constitutions and/or legislation (110 States), and/or through regional human rights agreements (126 States).<sup>9</sup> Taken together, this means that more than 80 per cent of UN member States (156 out of 193) now recognise the right to a clean, healthy, and sustainable environment in one form or another.<sup>10</sup>

This means that considerable experience and recorded good practice exist in terms of national recognition and implementation of the right, and what that has meant for rights holders, the natural environment, and the climate.

## KEY QUESTIONS

Participants at Glion VIII were encouraged to consider, *inter alia*, the following questions:

1. What has existing recognition of this right meant for domestic environmental/climate laws and policies, and for securing environmental justice?
2. What has existing recognition of this right meant for environmental and climate jurisprudence?
3. What has it meant for the protection and empowerment of environmental human rights defenders (EHRDs)?

## ISSUES FOR REFLECTION AND OPPORTUNITIES FOR CHANGE

### Further national recognition of the right to a clean, healthy, and sustainable environment

- A first discussion centred on what existing domestic experiences might tell us about the likely impact of UN recognition on **further national recognition** of the right to a clean, healthy, and sustainable environment by national governments. In that regard, five States shared their experiences of how and why they recognised the right.
- In one case, a decision to include the right in the constitution was taken after a case had been brought before the country's constitutional court, and the court found that the plaintiff (a young environmental activist) enjoyed the right to live in a healthy environment. In another case, the decision was inspired by the 1972 Stockholm Declaration. In the other three examples, the right was included in national environmental legislation, either upon the initiative of the government or individual legislators. A further impetus, in three of the five cases, was the State's decision to ratify relevant regional human rights instruments (i.e., that included the right to a healthy environment).

- All of the cases suggest that, especially if recognition through UN resolutions is followed by further work to clarify the scope and content of the right by Treaty Bodies or Special Procedures, and especially if States embark on negotiations on a legally binding instrument on the right to a clean, healthy, and sustainable environment, then it will have a significant influence on the likelihood of further national recognition.

### Is recognition of the right a necessary precondition for the protection of the environment?

- A second focus of discussions centred on the question of whether national recognition of the right to a clean, healthy, and sustainable environment is a **necessary precondition** for the elaboration and enforcement effective environmental legislation.

- Some speakers argued that it is not. Referring to their own countries, which do not currently recognise the right, they claimed that they **in-any-case have strong environmental and climate legislation**, which ‘is stronger than most countries that do recognise the right.’ Another speaker agreed and, using the EU as an example, explained that although the right to a healthy environment is not included in the EU Charter of Fundamental Rights, the EU has some of the most stringent laws and policies on climate and environment in the world. That said, the EU strongly supports the right to a clean, healthy, and sustainable environment.

- Others disagreed, saying this **should not be seen as an ‘either/or’ question**. Of course, States can have strong environment legislation without recognising the right, they said. However, evidence from around the world shows that national recognition of the right helps further improve environmental legislation and policy by focusing on individuals, especially the most vulnerable, and by empowering those who wish to protect the environment. ‘National recognition of the right, especially through constitutions, also provides additional leverage to courts to hold governments and private actors accountable for environmental damage and the human rights harms this causes.’

## Interpretation by courts

- This last point led to a discussion on how **courts**, in countries that already recognise the right to a clean, healthy, and sustainable environment, have sought to **give legal and practical meaning to the right**. One participant explained how the right has been interpreted by courts in two broad ways: extensively, with potentially far-reaching consequences for States; or restrictively, based on a concern that implementation of the right might be ‘too cumbersome an obligation.’

- There was broad agreement that where courts have pursued an **extensive interpretation** of the right, it has tended to catalyse important domestic progress (e.g., better environmental legislation, and improved enforcement). One participant explained that, in her country, court decisions had provided detailed guidance to the government and had provided ‘cover’ for ministers to take what might otherwise have been considered ‘unpopular decisions.’ Another speaker recounted how a constitutional court decision had ‘informed the reform of our entire body of environmental

laws, strengthening accountability, improving protections for vulnerable communities, strengthening access to justice, and driving improved environmental outcomes.’

## Effective implementation

- Discussions next turned to what the experience of States that already recognise the right to a clean, healthy, and sustainable environment tells us about the **effective implementation/realisation** of the right.

- Participants acknowledged that implementation is **highly uneven** across those States that recognise the right – in line with uneven implementation of all rights. In other words, the mere presence of the right in, for example, national constitutions, does not guarantee effective protections for rights-holders or improved environmental outcomes.

- That said, where there is effective implementation, one participant identified a number of potential **‘success factors.’** One is the level of government commitment to human rights and/or environmental protection. A second relates to the involvement of the private sector – where the private sector is viewed as a partner by the government, and where businesses take their responsibilities under the UN Guiding Principles on Business and Human Rights and UN Global Compact seriously, it tends to significantly boost compliance. A third is to link implementation of the right to a clean, healthy, and sustainable environment with the realisation of relevant parts of the 2030 Agenda – especially SDG13 (Take urgent action to combat climate change and its impacts). ‘This makes implementation of the right more ‘palatable’ for many governments and helps mobilise the UN development system behind implementation.’

- Where States have effectively implemented the right to a clean, healthy, and sustainable environment, **how have they done so?** Two key means were identified. First, in many countries, recognition of the right, for example in national constitutions or laws, has acted as a catalyst for the development of stronger environmental and/or climate legislation and policies. In particular, recognition has led to the revision of laws and policies in a rights-based manner – e.g., by providing greater access to information, decision-making, and justice for affected/vulnerable communities. Several case studies were shared whereby changes to environmental or climate legislation have included the obligation to conduct not

only environmental impact assessments, but also assessments of how planned development projects will impact on people's right to a clean, healthy, and sustainable environment. Second, especially where governments have been reluctant to implement the right, and especially where the right is recognised through constitutional provisions, national courts have played a key role in realising the right to a clean, healthy, and sustainable environment. It was noted that recent years have seen a significant upswing in the number of environmental or climate cases brought before national courts that use the right to a clean, healthy, and sustainable environment as their principal legal basis.

- **Supreme Court rulings in States of the Central American region** were repeatedly referred to as examples of this trend. 'Research has shown that the right to a clean, healthy, and sustainable environment has become by far the most important legal basis through which both litigants and courts seek to protect the region's biodiverse ecosystems.'

- Another speaker explained how the courts in her country had increasingly cited the right to a healthy environment in

their judgements, often combining it with the principle of *in dubio pro natura* (which establishes that in case of doubt about the potential adverse effects of an activity, the interest of the preservation of nature must prevail). **Such jurisprudence, she said, 'had brought vast improvements** to the prevention of irreversible damage to the environment,' as well as improvements to the enjoyment of human rights.

- On the contrary, another participant explained that in his State, the right to a clean, healthy, and sustainable environment, recognised in the constitution since 1994, has had little or no impact 'because in practice it is **not justiciable** before the courts.'

- The **implementation of the right to water and sanitation** at national level, after it was recognised by the UN General Assembly and Human Rights Council, was frequently offered as an example of how the right to a clean, healthy, and sustainable environment might be realised in the future following UN recognition. According to one participant, even after recognition by the UN, the right to water and sanitation was not effectively implemented in Latin America until different national justice







systems began to apply the right. The example was offered of one Latin American State where a case was brought against a city council that had cut off water supplies to those unable to pay their bills. Citing the right to water and sanitation, and referring to a general comment by the Committee on Economic, Social and Cultural Rights, the judge declared that the State had an obligation to provide each person with forty litres of water per day (i.e., the minimum amount of drinkable water for sanitation and meals).

- **Regional human rights courts** too are playing an important role in realising the right to a clean, healthy, and sustainable environment. 'Cases brought before the African and Latin American human rights systems are creating robust regional jurisprudence.' While the European Convention on Human Rights (ECHR) does not explicitly recognise the right to a healthy environment, environmental issues have been examined by the European Court in several cases. These centre on the impacts of environmental harm on other human rights protected by the ECHR (such as the right to life, the right to health or the right to family life). One participant argued that 'there will be greater convergence between the jurisprudence of the three systems over time.'

- Other participants spoke of **key challenges to effective implementation**, based on experiences in countries that already recognise the right to a clean, healthy, and sustainable environment. One is the issue, referred to in part I of this report, of extraterritoriality. How, for example, can small developing States effectively promote and protect the right in the face of air pollution or climate change when the causes of these phenomena may lay beyond the State's control (i.e., are transboundary). In a similar vein, another speaker highlighted the acute challenges involved in protecting the right to a healthy environment in occupied territories.

## Protection and empowerment of environmental human rights defenders

- Several civil society speakers highlighted the dire situation faced by EHRDs around the world, and argued that, where the right to a clean, healthy, and sustainable environment is already recognised at national level, it has helped **empower and better protect** this vulnerable group.

- One participant explained that the right, where it is recognised, provides a central focus for EHRDs – i.e., they are working to promote and protect this specific right. Previously, they had to focus on purely environmental concerns (i.e., as ‘environmental activists’) or on the impacts of environmental harm on existing rights such as the right to health. Another added that the right to a clean, healthy, and sustainable environment helps **‘legitimise the work of EHRDs’** – making it easier to push back against the narrative, presented by some government officials and business leaders, that EHRDs are ‘anti-development.’
- Another participant echoed these points, adding that ‘for **indigenous peoples**, the right to a healthy environment safeguards their rights, culture, and livelihoods, and contributes to conserving nature and biodiversity for both current and future generations.’
- A State representative reported that, following recognition of the right to a clean, healthy, and sustainable environment in the 1990s, his government had established a **specific programme to better protect EHRDs**.





**WHAT ARE THE  
IMPLICATIONS OF  
UN RECOGNITION  
OF THE RIGHT TO A  
CLEAN, HEALTHY,  
AND SUSTAINABLE  
ENVIRONMENT BOTH  
NATIONALLY AND  
INTERNATIONALLY?**



## WHERE ARE WE TODAY?

Giving practical meaning to the right to a clean, healthy, and sustainable environment, especially for rights-holders, will require concerted action by a range of stakeholders at national, regional, and international levels. National and international civil society actors, as well as NHRIs, could play an important role in the implementation and interpretation of the right by helping EHRDs understand this newly recognised right and how they can assert it at the national level to better protect themselves, their communities, and their environment/climate. Where the right is recognised, national judiciaries have a key role to play in interpreting and applying it.

In all of this, governments, parliaments, judges and lawyers, domestic civil society and EHRDs might be assisted by UN Country Teams – in line with the Secretary-General's Call to Action and Our Common Agenda – working with national stakeholders to support the implementation of relevant recommendations from the human rights mechanisms. Those mechanisms, including Treaty Bodies and Special Procedures, may also play a normative role, especially in clarifying the scope and content of the right, and the corresponding duties of States.

Regional human rights mechanisms and courts can also play an important role in ensuring that UN recognition serves as 'a springboard to push for transformative economic, social, and environmental policies that will protect people and nature.' As noted above, the right to a healthy environment is already recognised in the African Charter on Human and Peoples' Rights, the Protocol of San Salvador to the American Convention on Human Rights, and the Escazú Agreement. In 2021, the Parliamentary Assembly of the Council of Europe recommended (before the adoption of the relevant UN resolutions) that the Committee of Ministers adopt an optional protocol to the European Convention on Human Rights on the right to a safe, clean, healthy, and sustainable environment.

The private sector will also have an important role to play if UN recognition of the right to a clean, healthy, and sustainable environment is to have real meaning for rights-holders around the world, and lead to improved environmental outcomes.

## KEY QUESTIONS

Participants at Glion VIII were encouraged to consider, *inter alia*, the following questions:

1. What are the implications of UN recognition for Member States at the national level?
2. What are the implications of recognition for domestic civil society, especially for EHRDs?
3. What are the implications of the recognition of the R2HE for business (e.g., how does the right to a healthy environment intersect with the UN Guiding Principles on Business and Human Rights)?
4. What are the implications of recognition for UN Country Teams, including in the context of delivering on the Secretary-General's 'Our Common Agenda' and his 'Call to Action' on human rights?
5. What are the implications for the international and regional human rights instruments and mechanisms (including the Treaty Bodies and the UPR)?

## ISSUES FOR REFLECTION AND OPPORTUNITIES FOR CHANGE

### Implications of UN recognition for States

- UN recognition was predicted, by many speakers, to have important implications for those **States that do not yet recognise** the right to a clean, healthy, and sustainable environment – encouraging them, in effect, to do so, especially if they voted in favour of, or cosponsored, Council resolution 48/13. (The Glion VIII retreat took place before the adoption of the General Assembly resolution on the subject, but the same

rule applies – i.e., those States that cosponsored the resolution or voted in favour are likely to come under domestic pressure to recognise the right).

- Other participants disagreed with this reading, however. They noted that **neither the Council and General Assembly resolutions are binding** – neither creates any legal obligations to recognise or implement the right to a clean, healthy, and sustainable environment.

- Where States do choose to recognise the right, or where they already do so, participants at Glion VIII predicted that UN recognition is likely to lead to an **increase in domestic pressure** (e.g., from civil society, indigenous groups, and parliamentarians) on governments to realise the right and give it meaning. According to several speakers, such pressure is likely to include calls for national environmental and climate legislation/policies to be revised in light of the right to a clean, healthy, and sustainable environment, an increase in court judgements citing UN recognition (and the relevant State's position thereon), as well as relevant Treaty Body general comments, and an increase in public awareness about the right – leading, naturally, to more and more people seeking to assert it.

- One speaker referred to the global civil society campaign mobilised behind UN recognition, and suggested that this gives an indication of what States should expect in terms of **civil society (both human rights and environmental NGOs) pressure** – pressure to recognise the right nationally and/or implement it. 'National civil society will certainly have been watching how countries voted at the Human Rights Council, and will be watching how they vote at the General Assembly,' said one person. 'And they will undoubtedly bring that information to bear over the coming months and years.'

- With or without such pressure, one State representative predicted that UN recognition of the right is likely to **strengthen the position of those in government** (e.g., in environment and foreign ministries) who wish for the right to have meaning for rights-holders and for the environment/climate. She predicted that environment ministries may well use UN recognition as a 'hook' to push for a review of environmental laws and policies in light of the right to a clean, healthy, and sustainable environment. She also predicted that environment ministries will use UN recognition to launch information or awareness-raising campaigns to inform the public about the right, what it means for them and for the environment, and how they can assert/claim it. Another speaker predicted

that foreign ministries may well use the State's engagement with the UN human rights mechanisms (including reporting and implementing recommendations) to promote the right domestically.

- Another participant, while acknowledging that UN recognition is likely to lead to increased public awareness of the right in his country (which does not recognise it at present) and thus greater civil society and public pressure on the government, nevertheless predicted that, due to the country's legal system, the right to a clean, healthy, and sustainable environment is **unlikely to have any practical impact** until States have adopted an international instrument on the right, and until his country has ratified such an instrument.

- This led to a discussion on the international-level implications of UN recognition for States, especially around 'next steps' – considering many States during consultations on Council resolution 48/13 called for **intergovernmental negotiations over a new legally binding instrument** on the right to a clean, healthy, and sustainable environment (to clarify the right's scope and content, and to make it meaningful by creating State obligations).

- A further State representative echoed this view, and expressed her hope that **all States** – not only States that have already recognised the right – will be able to contribute to future international discussions on how to move forward, including through, potentially, a new instrument.

## Implications for judges and lawyers

- As noted elsewhere during discussions at Glion VIII, UN recognition of the right to a clean, healthy, and sustainable environment has important implications for **national judges and lawyers**.

- In countries where UN recognition leads to national recognition, or where the right is already recognised, Council resolution 48/13 (especially if followed by General Assembly recognition) is likely to see a further increase in the amount and proportion of **environmental and climate litigation** that uses the right to a clean, healthy, and sustainable environment as its legal basis. Judges may also increasingly refer to Treaty Body general comments on the right – if UN recognition leads to the expected increase in Treaty Body focus on human rights and environment/climate.

- In any case, several speakers underscored the importance of **informing and educating national judges and lawyers** about the right, as well as work that has already been done at international and regional levels to clarify the right's scope and content.

- A further point made in the context of judges and lawyers was that it will be important for different judicial systems to **share jurisprudence and practice**, especially on difficult issues such as **causality and extraterritoriality**. According to one speaker, it is very difficult to demonstrate causality (to prove human rights violations) in the context of environmental harm or climate change. To illustrate this point, he compared causality in a case of torture where 'there are direct pathway of responsibility up a chain of command,' to environmental harm 'where there are often many different transboundary actors and entities (e.g., individuals, the business sector, parliamentarians, and governments) contributing to the problem.' The intersection between human rights law and criminal law (including requirements of individual responsibility and burden of proof) was raised as an additional barrier. Finally, the factor of time was mentioned as a complicating factor, in that environmental damage often occurs or becomes apparent over an extended period.

- Another participant noted that the challenge of establishing causality becomes even more acute where **cause and effect are cross-border** (often the case with environmental harms such as air pollution).

- Another speaker, while acknowledging these challenges, pointed out that **advances in science and understanding of causality** surrounding environmental harm might help overcome some of these obstacles to successful strategic litigation, particularly if it becomes easier to show that pollution or emissions come from certain actors in certain countries.

## Implications for civil society (and especially EHRDs)

- As noted above, there were repeated assertions made, at Glion VIII, that **domestic civil society is highly mobilised** on the question of the right to a clean, healthy, and sustainable environment. This is likely to lead to domestic campaigns to encourage States that have not yet recognised the right to do so, and States that have recognised it to strengthen implementation. It is also likely to lead, according to one participant, to a steep increase in information and awareness-raising campaigns aimed at the **general public**, and to

information and capacity-building campaigns for specific at-risk groups such as EHRDs and indigenous persons.

- Another participant predicted that, irrespective of whether a State has already recognised the right to a clean, healthy, and sustainable environment, domestic civil society is likely to insist that their government **fulfils key aspects of the right**, such as access to information, and access to decision-making.

- Many participants, including EHRDs themselves, asserted that UN recognition of the right to a clean, healthy, and sustainable environment will have **major positive implications for EHRDs** – 'inspiring them, empowering them, protecting them.' Among the various positive implications of the right for EHRDs, participants drew particular attention to the following: 'the right adds legitimacy to their fight for environmental justice;' 'the right encourages governments to comply with their duty to consult with affected or vulnerable populations, and to guard against reprisals;' and 'the right helps change the narrative around EHRDs (usually promoted by economic actors) that they are 'anti-development' to a more positive narrative that they are **'pro-right to a clean, healthy, and sustainable environment' and/or 'pro-sustainable development.'**

- While there was little disagreement with the notion that perhaps the greatest impact of the right to a clean, healthy, and sustainable environment will be to 'protect those who seek to protect the environment,' it was nonetheless pointed out that many EHRDs live in remote locations or marginalised situations, and thus will need help and **access to support networks** if they are to effectively leverage the right. That support will mainly have to come from national and international NGOs.

- One speaker urged colleagues not to take it for granted that the general public will always be supportive of the right to a clean, healthy, and sustainable environment. He noted that, especially in certain developed States, **a majority of citizens may be sceptical about new environmental initiatives**. Any information campaign must therefore explain the added value of a rights-based approach, and address concerns about possible adverse impacts of the right on, for example, livelihoods.

## Implications for business

- A business representative noted that the Council's adoption of resolution 48/13 has been important for business for two key reasons. First, beyond regular Council debates on 'business



and human rights,' the push for Council recognition of the right to a clean, healthy, and sustainable environment was **one of the first thematic Council initiatives that has caught the attention of businesses**. In the end, certain business groups (e.g., the B Team) made important contributions to the campaign for UN recognition, including through statements and letters to heads of government (supported by over 50 businesses, including major multinationals). The second is that the newly recognised right helps businesses '**widen the conversation**' about their responsibility to respect human rights (under the UN Guiding Principles) to also encompass corporate responsibility in the area of environmental protection and climate. For example, it was reported that as part of their contribution to securing a just transition, businesses are increasingly adopting a rights-based approach to tackling climate change.

- According to the same speaker, corporate disclosure around environmental, social, and governance (ESG) issues is an increasingly important priority for businesses. This can already be seen in the nascent movement towards **mandatory human rights and environmental due diligence**. It is entirely possible, it was suggested, 'to imagine that the impacts of business

decisions on the right to a clean, healthy, and sustainable environment be included in such due diligence controls.'

- Nonetheless, businesses will need considerably more guidance from the international human rights community as to what the right to a clean, healthy, and sustainable environment is, and what it means for businesses operations. In that regard, although 'the UN Guiding Principles on Business and Human Rights automatically include/cover any new UN-recognised right, it will nonetheless be necessary for the **UN Working Group on business and human rights to help businesses understand what this means in practice**.' Another suggestion was to expand or replicate regional initiatives such as 'the EU's mandatory human rights-environment due diligence framework.'

## Implications for UN Country Teams

- Various speakers noted how UN recognition of the right to a clean, healthy, and sustainable environment, as well as strong support for the right on the part of the Secretary-General and heads of key UN agencies, and the inclusion of the right in Our





Common Agenda, has already had a significant influence on the UN development system, encouraging Resident Coordinators and Country Teams to proactively integrate the right (and the linkage between human rights and environment more broadly) into **UN Sustainable Development Cooperation Frameworks (UNSDCF)**.

- For example, a UN Country Team in a Latin American State reported that the newly signed UNSDCF employs a much more holistic approach to sustainable development, covering economic progress, human rights promotion and protection, and environmental sustainability. What is more, it was predicted that as the UN human rights mechanisms increasingly extend recommendations to States on the right to a clean, healthy, and sustainable environment (following UN recognition), the integration of the right into UNSDCFs will further increase.
- Finally, the speaker explained that, following the inclusion of environment and climate in the Secretary-General's Call to Action on human rights, and the inclusion of the right to a clean, healthy, and sustainable environment in Our Common Agenda, UN Country Teams are increasingly including the **protection and empowerment of EHRDs** as priority actions in **UNSDCFs**. UN agencies and States, for example in Latin America - where EHRDs are under particular threat, are increasingly agreeing partnerships to protect EHRDs and address underlying causes of threats to them such as environmental crimes, impunity, corruption, and a lack of land tenure.

## Implications for international and regional human rights mechanisms/instruments

- There was wide agreement at Glion VIII that Council (and eventually General Assembly) recognition of the right to a clean, healthy, and sustainable environment will 'open the door' to increased activism on the part of the three main **human rights mechanisms** (i.e., Universal Periodic Review, Treaty Bodies and Special Procedures) on the issue – especially in terms of

extending recommendations to States to recognise the right (where they are yet to do so) and to implement the right (where they do). Linked with this point, there was also an expectation, expressed at Glion VIII, that national (State) and alternative (NGO and UN system) reporting to the UPR and Treaty Bodies will increasingly include the situation of the right to a clean, healthy, and sustainable environment, as well as ideas to further realise the right.

- Notwithstanding, another speaker pointed out that, in order for the mechanisms to play this role to the full, it will first be necessary to **clarify the scope and content** of the right to a clean, healthy, and sustainable environment.

- Linked to this point, the **norm-setting role of Treaty Bodies and Special Procedures** was raised. It was noted that the UN Special Rapporteur on human rights and environment has already taken steps to clarify the scope and content of this newly recognised right (e.g., through his Framework Principles), and that Treaty Bodies have a similar role to play (e.g., through general comments).

- The role of the **UPR** in providing a platform for States to share good practices in the recognition and implementation of the right to a clean, healthy, and sustainable environment was highlighted. 'There are decades of good practices out there,' said one participant, 'and the UPR provides an ideal space for sharing those practices and lessons learnt, and for dispelling misconceptions about this right.'

- Finally, a State representative explained how UN recognition may encourage the **European human rights system**, which does not yet recognise the right to a clean, healthy, and sustainable environment, to add the right to the European Convention on Human Rights. He noted that the Parliamentary Assembly of the Council of Europe has recommended that the Committee of Ministers adopt an optional protocol to the European Convention to this effect.

## END NOTES

- 1 UNEP, 'Making Peace with Nature: A scientific blueprint to tackle the climate, biodiversity and pollution emergencies', 2021, <https://www.unep.org/resources/making-peace-nature>
- 2 DW, 'Making Peace With Nature', 2021, <https://www.dw.com/en/making-peace-with-nature/a-56615328>
- 3 World Meteorological Organization, 'Make peace with nature, says new UN report', 2021, <https://public.wmo.int/en/media/news/make-peace-nature-says-new-un-report>
- 4 United Nations, 'Secretary-General's Call to Action for Human Rights', 2020, <https://www.un.org/en/content/action-for-human-rights/index.shtml>
- 5 United Nations, 'Our Common Agenda', <https://www.un.org/en/common-agenda>
- 6 The adoption of General Assembly resolution 76/300 took place two months after Glion VIII.
- 7 OHCHR, 'Framework Principles on Human Rights and the Environment (2018)', 2018, <https://www.ohchr.org/en/special-procedures/sr-environment/framework-principles-human-rights-and-environment-2018>
- 8 Special Rapporteur on human rights and the environment (D.R. Boyd), Good Practices Report, 2020, A/HRC/43/53 and annexes.
- 9 For example, the 1981 the African Charter on Human and Peoples' Rights, the 2004 Arab Charter of Human Rights, the 1998 Protocol of San Salvador to the American Convention on Human Rights, and the 2018 Escazú Agreement.
- 10 In cooperation with the Vance Center for International Justice, the UN Special Rapporteur on human rights and the environment has prepared an updated list of States that legally recognise the right to a safe, clean, healthy, and sustainable environment. According to that study, there are 110 States where the right to a healthy environment enjoys constitutional protection, and 126 States that have ratified regional treaties that include recognition of the right (these two groups of States overlap significantly).









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