



Is it time for universal recognition of the right to a healthy environment?

Academic conference
6 February 2020, Geneva

Building on earlier work by the Commission on Human Rights, the Human Rights Council and its mechanisms have been actively engaged on the topic of human rights and the environment. They have made enormous progress in clarifying and setting down the human rights normative framework as it relates to the environment and to environmental protection. In particular, they have demonstrated that environmental harm (including that caused by climate change) has enormous negative implications for the enjoyment of human rights, especially for the most vulnerable in society, and that, conversely, human rights obligations and principles can help guide better environmental policymaking at international- and national-level. In parallel, the Council and its mechanisms have also drawn increasing attention to individuals working at the interface of human rights and environmental protection: environmental human rights defenders (EHRDs).

This progress led the first Special Rapporteur on human rights and the environment, John Knox, to use his last speech to the Council as mandate-holder to urge the international community to consider the next logical step in this process: formal UN recognition of the universal right to a safe, clean, healthy and sustainable environment (RHE). In doing so, the UN would be reflecting the growing practice of States – well over a hundred countries have now recognised the right to a safe, clean, healthy and sustainable environment (in different formulations) in law; as well as the reality in various regional human rights systems (e.g. Africa, Latin America). The current UN Special Rapporteur, David Boyd, has made this drive for recognition of ‘the right to a healthy environment’ one of his key priorities.

To kick-start discussions at the UN about the right to a safe, clean, healthy and sustainable environment, on 6 February 2020 the Council core group on human rights and the environment (made up of Costa Rica, Maldives, Morocco, Slovenia and Switzerland), with the support of the Universal Rights Group (URG), the Commonwealth Small States Office in Geneva, the Geneva Academy, UNICEF, UNEP, and OHCHR, convened an academic conference to consider the growing recognition of the RHE around the world, to understand the value of this right for individual rights-holders and for the environment, and to answer the question: is it time for universal recognition of the RHE?

Welcome remarks and keynote speeches

The meeting began with introductory remarks by **Ambassador Sabina Stadler Repnik**, Permanent Representative of Slovenia to the UN in Geneva, and Ambassador **Hala Hameed**, Permanent Representative of the Maldives to the UN in Geneva.

It then heard keynote addresses by Michelle Bachelet, UN High Commissioner for Human Rights, Inger Andersen, Executive Director of UNEP, Henriette Ahrens, UNICEF Deputy Director of Programmes, and Dante Vergara, a young climate activist, during which all spoke in favour of the global recognition of the right to a healthy environment.

In her keynote address, the High-Commissioner for Human Rights **Michelle Bachelet** drew attention to the importance of universal recognition of RHE, which has the potential to 'transform the lives of millions.' Mass extinctions, extreme weather events, and water, food and air pollution, threaten humanity and the enjoyment of all human rights.

She recalled that States have a clear obligation under international human rights law to prevent the adverse impact of these and other forms of environmental degradation, stressing that a healthy environment is just as vital to human well-being as shelter, clean water or freedom of expression. For this reason, all people everywhere should have the right to live in a healthy environment and have the ability to hold those who impede that right to account. Noting that more than 150 countries have already recognised this basic reality through constitutional provisions, laws and regional agreements, she said that global recognition of the right was the natural and necessary next step to drive more ambitious policies to protect people and planet.

Similarly, **Inger Andersen**, Executive Director of UNEP, underlined the mutually interdependent relationship between the environment and human rights. Human rights cannot be enjoyed without a healthy environment and therefore when we protect the environment, we are also protecting human rights. She noted how legal recognition of the right to a healthy environment has been expanding for decades (ever since the Stockholm Conference in 1972), with over a hundred countries having incorporated it their constitutions and many more having recognised it through national laws and jurisprudence, or through regional agreements. As a result, the right is protected in more than three-quarters of countries around the world.

More broadly, there is increasing interest in and recognition of the links between the environment and human rights. For example, seven years ago the Council established the mandate of the Special Rapporteur on human rights and the environment, while human rights are integrated into the 2030 Agenda on Sustainable Development and the Paris Agreement on climate change.

Notwithstanding, far more needs to be done. At a time of a global climate emergency, she said, we need every tool in the toolbox to push back, and the RHE is one of those tools. UNEP therefore fully supports universal recognition of the right to a healthy environment.

Henriette Ahrens addressed the particular importance of universal recognition of the right to a healthy environment for children. With more than 1.7 million children under the age of five losing their lives every year as a consequence of avoidable environmental impacts, and millions more suffering disease, disability and an array of other harms, including respiratory conditions, heart disease, lung cancer, neurodegenerative disease and impaired cognitive development – all of which have been shown to be linked to exposure to unsafe environments – she urged participants to understand that the environmental and climate crises are also child rights crises.

She further pointed to the disproportionate impacts of environmental degradation on children living in poverty, as well as how it exacerbates existing inequalities within and across generations and societies. This in turn makes universal recognition of the RHE essential for the achievement of the SDGs 'leaving no one behind.'

For all these reasons, UNICEF fully supports global recognition of the right to a healthy environment and believes that if coupled with rapid and systematic action by States to prevent and control exposure to unsafe environmental conditions, it would have substantial and long-lasting positive impact for children and their rights.

Finally, participants listened to a powerful address by **Dante Vergara**, an 11-year-old climate activist.¹ Dante expressed concern at the failure of governments to fight climate change, and said, as a consequence, future generations would inherit an increasingly sick world. Finally, asserting that ‘climate change has no borders,’ he urged all countries ‘to formally recognise the right to a healthy environment, to clean air, drinking water, healthy food, a stable climate, and to biodiversity and healthy ecosystems.’

Panel debate: ‘Is there a universal right to a safe, clean, healthy and sustainable environment: where are we today, and does it really matter (for the environment and for human rights)?’

Following the high-level opening, the conference focused on defining the substance of the RHE and on delineating the next steps to take forward its universal recognition.

Before the panel debate, participants listened to a video message from UN Special Rapporteur on human rights and the environment, **David Boyd**. The Special Rapporteur drew attention to the unprecedented nature of the current environmental crisis. 2019 saw the highest atmospheric and oceanic temperatures, the highest levels of atmospheric CO₂, and the lowest levels of arctic sea ice on record. He pointed to the devastating impact this environmental degradation is already having, with one million species at risk of extinction, and nine million people dying prematurely each year as a result of air pollution.

Recalling the transformative role human rights have played throughout history, he claimed that a UN resolution recognising the right to a healthy environment could have a catalytic impact. It would spur all States to recognise this right domestically, accelerate national action to respect, protect and fulfil this right, support the work of environmental human rights defenders (EHRDs), and help mobilise young people. Referring to his most [recent report](#) to the Council on good practices in implementing the right to a healthy environment, Professor Boyd described the positive impacts that national recognition of the right is already having around the world - by serving as a catalyst for stronger environmental laws and policies, by strengthening implementation and enforcement, and by increasing public participation.

The conference then turned to a panel debate on the value and current status of the right to a safe, clean, healthy and sustainable environment. Marc Limon of the Universal Rights Group, Professor Laurence Boisson de Chazournes of the University of Geneva, Soo-Young Hwang of OHCHR and Professor Daniel Magraw of Johns Hopkins University presented different aspects of the substance, history and global status of the right, in a discussion moderated by **Felix Kirchmeier** of the Geneva Academy.

Marc Limon began by presenting the history and background of the work of the Human Rights Council on human rights and the environment. He traced the significant steps taken by the body and the wider UN in building support for recognition of the RHE – something that would have been inconceivable only ten years ago. In his opinion, the RHE is the major missing piece left over from the drafting of the Universal Declaration of Human Rights.

Universal recognition is the next logical step from a historical, moral, philosophical and legal perspective. It would also be a pragmatic step, as it would allow for better protection of [EHRDs](#). Ultimately, he said, a safe, clean, healthy and sustainable environment is the basis of the

¹ Initially delivered on the occasion of the 30th anniversary of the Convention on the Rights of the Child, held at United Nations General Assembly on 20 November 2019.



enjoyment of all human rights, and, seen the other way around, protecting the full enjoyment of human rights is the best way of conserving the environment.

Professor **Laurence Boisson de Chazournes** presented a comparative analysis of the jurisprudence of the European and Inter-American Courts of Human Rights. She explained that both Courts have confirmed that States' obligations to ensure a sound protection of human rights relies on their obligation to ensure a sound protection of the environment. In legal terms, this joint obligation has essentially been translated into an obligation to prevent environmental damage that has negative implications on human rights, notably by performing the required due diligence through, for example, environmental impact assessments. While the Inter-American Court has confirmed that the right to environment is a stand-alone right, the European Court has not, as-of-yet, taken this step. However, she argued that while courts have qualified the positive obligations of States to protect the environment, it does not fall within their purview to recognize new rights. This remains a fundamentally political prerogative.

Soo Young Hwang presented the various areas in which increasingly strong engagement from civil society and different parts of the UN has led to increasing mobilisation around the right to a healthy environment. As an advisor to the Special Rapporteur on human rights and the environment she has noticed progress at national level over the past couple of years and also noted an increase in cooperation and coordination between different ministries. She continued by outlining different regional instruments that enshrine the RHE, leading to its recognition by over 80% of UN member States. In this regard, she pointed to the work of the OIC, ASEAN, the European Parliament, the Commissioner for Human Rights of the Council of Europe, as well as the adoption of the Escazú Agreement. She noted how, despite the slightly different nature of these recognitions, discussions around the substance of this right has led to a developing consensus around minimal standards at global level. Notwithstanding, the paucity of cases before courts is precisely the reason why there needs to be a renewed global consensus on its scope.

Professor **Daniel Magraw** described the evolution of a rights-based approach to environmental protection. He claimed that it wasn't until the turn of the century that, through concepts such as 'ecosystem services,' we came to realise that the environment is the foundation of our societies and the basis of our identities.

He then presented the normative framework of the right to a healthy environment, stressing the procedural and substantive aspects of the right. For example, the effective enjoyment of the right requires, on the one hand, access to information and justice, and on the other hand that States adhere to obligations to ensure that the actions of private actors do not lead to environmental damage. Professor Magraw highlighted how this interlinked conception of human rights and the environment was first addressed in the [Malé Declaration](#), which defines the RHE as 'the right to an environment capable of supporting human society and the full enjoyment of human rights.'

The debate that followed touched upon a number of related issues including: the situation of EHRDs; similarities between the push for recognition of the RHE and an earlier campaign to secure universal recognition of the right to safe drinking water and sanitation; the inadequate capacity of some national courts to formulate decisions on the right to a healthy environment; the possible financial implications of recognition of the right; and the recent decision of the Human Rights Committee regarding the 'Teitiota Communication.'

Strategy brainstorm: 'Universal recognition of a safe, clean, healthy and sustainable environment: prospects for success and what next?'



Following the panel debate, all participants engaged in a ‘fishbowl’ discussion to strategize about how to secure universal recognition of RHE. This featured short interventions by Dr Vasilka Sancin, member of the UN Human Rights Committee, H.E. Harald Aspelund, Permanent Representative of Iceland to the UN in Geneva, Benjamin Schachter of OHCHR, Sebastien Duyk from the Center for International Environmental Law (CIEL), and Lucy McKernan from the Global Initiative for Economic, Social and Cultural Rights. The discussion was moderated by Marc Limon from URG and Urska Ucakar from the Permanent Mission of Slovenia.

Ahead of the discussion, participants heard a video message from **John Knox**, Professor of International Law at Wake Forest University, and former UN Special Rapporteur on human rights and environment.

In his introduction, Professor Knox thanked the Council core group on human rights and the environment for their work to secure the adoption of progressively stronger resolutions at the Council and for their support during his time as Special Rapporteur. He noted that enormous progress has been made since the first Council resolution on human rights and environment in 2012. Since then, the growing jurisprudence of human rights bodies and mechanisms, as well as the efforts of OHCHR, UNEP and other UN agencies that have progressively moved human rights from the periphery to the center of their work, has led States to become increasingly familiar with rights-based approaches to environmental protection. As a result, his mandate was subsequently upgraded to that of Special Rapporteur.

The current move towards universal recognition is both extremely welcome and extremely important, he said. It had always been his hope that the work of the Special Procedure mandate would lead to this point.

Turning to strategy, Professor Knox said that enshrining the RHE in a new treaty is neither necessary nor politically expedient, as the right exists and has been under construction in international law for several years. Furthermore, with its 2010 recognition of the right to clean water and sanitation the GA has already established that recognition of a right does not require a new treaty. He recommended that the core group follow a similar approach and aim to pass a simple resolution at the Council recognising the right to a healthy environment. This would then be endorsed by the GA.

Dr **Vasilka Sancin** presented the work of the Human Rights Committee on topics related to the environment. In particular, she mentioned the Committee’s General Comment 36 and its decisions in the *Teitiota*, as well as the *Caceres vs. Paraguay* cases. She highlighted the manner in which possible litigation strategies regarding human rights and the environment might differ from one case to another. This is because alleged human rights violations relating to environmental harm may not be limited to the most obvious rights such as the right to life or the right to the highest attainable standard of health, but might also encompass violations of other rights such as the right to be free from inhumane or degrading treatment or the right to an adequate standard of living. Dr Sancin expressed her belief that given the support for the right to a healthy environment at national and regional levels, there is a good chance of garnering strong support for it at the global level as well. Even if such support is not universal, a resolution recognising the RHE would surely enjoy the support of a large majority of UN member States. This would be an excellent way of marking the UN’s 75th anniversary.

Ambassador Harald Aspelund spoke of the close interconnection of the environment with human rights and human history. He argued that a healthy environment is central to the enjoyment of all human rights, and that it is important to formally recognise this interconnectedness through



universal recognition of the right to a healthy environment. He explained that a process is underway in Iceland to recognise the right to a healthy environment in a holistic manner – i.e. one that recognises its links to other human rights.

Ben Schachter, Sébastien Duyck and Lucy McKernan all spoke of the symbolic but also the practical importance of universal recognition of the RHE.

In the discussion that followed, participants raised a number of important points, including: how to ‘flesh out’ the substantive content of the RHE; how to proceed in a manner that maintains the strong current levels of State support – after all, in the end, it is States that will have to implement this right; the significance of existing litigation on the RHE and its linkages to other recognised rights; the relative merits of securing resolutions on recognition at the Council and the GA; and the importance of proceeding in a cautious manner to ensure unanimous recognition of the right at global level.

Speaking at the end of the discussion, **Ambassador Stadler Replik** explained that the core group would seek to move forward by holding a series of consultations to seek States’ views and build cross-regional support.

