

Glion Human Rights Dialogue 2022 (Glion VIII)

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

Background paper for break-out group I:

'What is the 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.'

According to proponents of this historic step, UN recognition of the right to a clean, healthy, and sustainable environment (hereafter, the right to a healthy 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 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 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, delegations raised a number of important questions. Many of these remain pertinent even after the adoption of resolution 48/13, as they have important implications for the key question of: what next?

Important questions included:

- What is the scope and content of the universal right to a clean, healthy, and sustainable environment?
- How to elaborate/clarify that scope and content, and which part(s) of the UN system should take the lead on this?
- What does the recognition of this new universal right mean for States at international and national levels?
- What next? How to give the right to a healthy environment legal meaning – including setting out the relevant duties of States? (Some delegations argued that this can only be achieved through intergovernmental negotiation of a legally binding treaty).
- How can the right to a healthy environment be claimed by rights-holders around the world?
- How does the right to a healthy environment relate to other rights? What is the ‘value-added’ of this right beyond that provided by existing universal rights?
- Will UN recognition of the right to a healthy environment act as a ‘green light’ for increased climate or environmental litigation?
- What would recognition mean for different parts of the UN, including those focused on climate change, the environment, trade, development, migration, and intellectual property rights?
- What does recognition mean for business enterprises?

Key questions to be considered during break-out group discussion I include, *inter alia*:

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?



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3. Which parts/aspects of the right to a healthy environment are included in existing, legally binding human rights guarantees?
4. What are the principal hoped-for benefits and ultimate objectives of recognition of the right to a healthy environment?
5. What is the scope and content of the universal right to a clean, healthy, and sustainable environment, and what are the key legal questions/issues to consider?
6. How to elaborate/clarify the scope and content, and which part(s) of the UN system should take the lead?
7. How does the right to a healthy environment relate to other rights? What is the 'value-added' of this right beyond that provided by existing universal rights?
8. Which parts/aspects of the right to a healthy environment are included in existing legally binding human rights/environmental instruments?
9. What does the recognition of this new universal right mean for States at international and national levels?
10. How can the right to a healthy environment be effectively claimed by rights-holders around the world?
11. What next? How to give the right to a healthy environment legal meaning – including setting out the relevant duties of States, and creating avenues for remedy and redress?