

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 II:

'What has the right to a clean, healthy, and sustainable environment meant where it is already recognised, at national and/or regional levels?'

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, recognition of the right to a clean, healthy, and sustainable environment by the Human Rights Council will help better protect individuals from the impacts of environmental degradation. It will also 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 clean, healthy, and sustainable environment to catalyse and act as a compass for further developments at national, regional, and international levels.

When it comes to understanding the meaning of the right, 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 universal right might mean in practice. According to a report by the Special Rapporteur on human rights and the environment, 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), or

regional human rights agreements (e.g., 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) – over 125 States. 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.¹

What has the right to a clean, healthy, and sustainable environment meant where it is already recognised, at national and/or regional levels?

For decades, there has been a lively debate among scholars about the merits of UN recognition of a right to a clean, healthy, and sustainable environment. Would such a step offer tangible benefits? Proponents have asserted that recognition would contribute to a variety of positive procedural and substantive outcomes ranging from increased public participation in environmental management to cleaner air and water. Critics have argued that such a right would duplicate existing norms, and would ultimately prove unenforceable and ineffective.

In considering these different viewpoints, it may be instructive to look at what the right to a clean, healthy, and sustainable environment has meant – for rights-holders and nature – where it is already recognised. There are two primary pathways through which international recognition of the right to a clean, healthy, and sustainable environment can lead to improved environmental outcomes and a decline in adverse impacts on human and ecosystem health. The first is through the influence of international human rights law on national constitutional, environmental and human rights law. The second is through the application of the right to a healthy environment in cases brought before international courts and tribunals.

Regarding the former, international recognition of the right is expected to have a positive impact on the development of national constitutions, legislation, and jurisprudence with a view to achieving stronger environmental laws, the improved implementation and enforcement of those laws, and improved environmental outcomes (e.g., cleaner air, safe drinking water), particularly for vulnerable and marginalised populations.

¹ 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).

Similarly, there are many examples of international law (e.g., the African Charter, or the San Salvador Protocol) influencing national court decisions relating to the right to a clean, healthy, and sustainable environment.

Regarding the latter, there is a growing body of regional jurisprudence – from the African Commission and Court on Human and Peoples’ Rights, the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, the European Committee of Social Rights, and the European Court of Human Rights – related to violations of the right to a clean, healthy, and sustainable environment. Air pollution, water pollution, noise pollution, exposure to toxic substances, and the failure to enact and enforce environmental laws, have all been identified as violations of various human rights, including the rights to life, health, water, culture, and a healthy environment.

Proponents of the right expect that further international recognition of the right to a clean, healthy, and sustainable environment would provide additional legal and environmental benefits. This argument is supported by reference to the impacts of UN resolutions adopted in 2010 recognising the right to clean water and sanitation. Those texts led to important constitutional reforms and legislative changes in several countries, influenced several court decisions, and - most importantly - have contributed to improved quality of life for millions of people.

Key questions for discussion

1. How have States that have recognised the right to a clean, healthy, and sustainable environment, implemented the right?
2. Has the right to a clean, healthy, and sustainable environment, where it is already recognised, resulted in improved (more effective and ambitious) environmental and climate legislation and policies, including in the context of environmental or climate justice, and has it resulted in jurisprudence (at national or regional levels) that has protected and promoted rights, including of the most vulnerable?
3. What has it meant for the protection and empowerment of environmental human rights defenders (EHRDs)?