

The Irish Citizens' Assembly on Biodiversity Loss



31 October, 2022

In April 2022, the Irish Citizens' Assembly on Biodiversity Loss ("the Assembly") held its inaugural meeting in Dublin Castle. Since then, the Assembly, which is made up of 99 randomly-selected members of the public and an independent Chairperson, has been examining how the state can improve its response to biodiversity loss. On completion of its work in December 2022, the Assembly will present a report and recommendations to the Houses of the Oireachtas (the Irish Parliament).

Introduction

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The Assembly's terms of reference state that it will consider, inter alia: the international, European, national, regional and local dimensions to the biodiversity emergency; the threats presented by biodiversity loss and the opportunities to reverse this loss; the main drivers of biodiversity loss; the perspectives of the general public, representative groups, advocacy groups, experts and policy makers on biodiversity loss; opportunities to develop greater policy coherence and strategic synergies between biodiversity policy and other policy priorities; opportunities to promote greater public understanding of, and support for, urgent action in response to the biodiversity emergency; and opportunities to improve the State's response to the challenge of biodiversity loss.

The track record of citizens' assemblies

This is not the first time the Irish Government has turned to this particular form of deliberative democracy in considering how to take action on matters of public importance. Indeed, in recent years, citizens' assemblies have proved to be an effective and unifying way of enacting major constitutional and

legislative change on some of the most topical and contentious issues of the day. For example, a [2012 Constitutional Convention on Marriage Equality](#) led to Ireland being the [first country in the world to legalise same-sex marriage by a popular referendum](#). A [2017 Citizens' Assembly on Abortion](#) led to a referendum and ultimately, the removal of Ireland's longstanding constitutional ban on abortion.

The UK and France have also experimented with this model. A [Citizens' Convention on Climate](#) took place in France in 2020, a number of whose recommendations were included in the country's new [climate law](#). Similarly, the UK convened its own Climate Assembly in 2020 where, over the course of six weekends, approximately 100 people from all walks of life discussed how the UK can reach its [legally binding](#) target of net zero emissions by 2050.

The Assembly's programme of work

The Assembly on Biodiversity Loss currently taking place in Ireland benefits from the varied perspectives of the general public, NGOs, advocacy groups, experts and policy makers as it considers what to include in its report and recommendations to government. [On 15 – 16 October](#), for instance, the Assembly heard from academics, farmers and conservation groups on the significant roles that agriculture, woodlands, forestry and the rehabilitation of Ireland's peatlands can contribute in responding to the challenges of biodiversity loss.

The Assembly will meet again on 05 – 06 November to discuss a different set of issues that impact on biodiversity loss. Despite the sheer breadth of the subjects the Assembly must grapple with between now and the conclusion of its work in December, there is one topical, over-arching issue that many experts and advocacy groups are seeking to draw to the Assembly's attention. That is, whether a right to a healthy environment should be inserted into the Irish Constitution by way of a popular referendum and, related to this, whether nature itself should be granted legal personhood. The growing interest in the concept of "rights of nature" and the legal possibilities it offers as a means of protecting the natural world were discussed in a [previous blog post](#) by Dr Ciara Brennan.

The possibility that the Assembly will lead to a constitutional amendment recognising the right to a healthy environment

In October 2021, the United Nations Human Rights Council, which is made up of 47 elected UN Member States, passed the much-awaited [Resolution 48/13.21](#) which recognises the human right to a safe, clean, healthy and sustainable environment. Importantly, the landmark resolution acknowledges that the climate crisis and environmental damage are interlinked and have a disproportionate impact on the most vulnerable sections of society. Building on the UN Human Rights Council's recognition of this right, in July 2022, the UN General Assembly, which is made up of all 193 UN Member States, [adopted a historic resolution](#) recognising the right to a safe, clean, healthy and sustainable environment as a universal human right. The resolution also recognises that the impact of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, and the resulting loss in biodiversity interfere with the enjoyment of this right. [See here](#) for Mark O'Brien O'Reilly's blog post on the benefits of recognising the right to a healthy environment at the international level.

The recent adoption of these historic resolutions arguably afford clarity and legitimacy to a right whose international recognition has long since been called for by environmental groups and the [current and previous UN Special Rapporteurs on Human Rights and the Environment](#). The timing of the resolutions is potentially significant for the Assembly given the Supreme Court's consideration of the right to a healthy environment in the landmark case, *Friends of the Irish Environment CLG v. the Government of Ireland* [2020] IESC 49 ("Climate Case Ireland"). See [here](#) for Professor Áine Ryall's blog post on the implications

of “Climate Case Ireland”.

In “Climate Case Ireland”, the Supreme Court decided that the government’s National Mitigation Plan on climate policy failed to specify the manner in which it proposed to meet its obligations under the [2015 Climate Act](#) to “transition to a low carbon, climate resilient, and environmentally sustainable economy” by 2050. In response to Friends of the Irish Environment’s arguments that allowing emissions to rise violated the rights to life, bodily integrity and an environment consistent with human dignity under the Irish Constitution and the European Convention of Human Rights, the Supreme Court indicated that a right to a healthy environment could not presently be found in the text of the Constitution but could still be enshrined in the Constitution by way of a referendum at {8.12}.

Importantly, one of the main difficulties facing the Supreme Court in recognising a derived right to a healthy environment in the Irish Constitution was its previously vague and ill-defined nature. As stated by Clarke C.J., “... it does seem to me that that there needs to be at least some concrete shape to a right before it is appropriate to identify it as representing a standalone and separate right derived from the Constitution ... there needs to be at least some general clarity about the nature of the right so that there can be a proper analysis of whether the recognition of the asserted right can truly be derived from the Constitution itself.” at {8.11}.

The UN resolutions arguably provide that right with the concrete shape and definition the Irish Supreme Court considered it lacked in 2020. Consequently, it can be argued that the time is now ripe for the Assembly to propose a referendum on a constitutional amendment recognising the right to a healthy environment as part of its recommendations to government in December 2022. This was suggested by the leading environmental law specialist and Chair of the Aarhus Convention Compliance Committee, Professor Áine Ryall, who, in [her presentation](#) to the Assembly on 16 October, stated that some might view the right to a healthy environment as an idea whose time has come.

The right to a healthy environment and the rights of nature: two sides of the same coin?

In a [written submission](#) to the Assembly from September 2022, the Environmental Justice Network Ireland (“EJNI”), Queen’s University Belfast School of Law and Lawyers for Nature requested that the Assembly support a constitutional amendment inserting the right to a healthy environment in the Irish Constitution. However, they pointed out that a rights-based approach to protecting the environment must not merely focus on what humans can get from nature but rather, how we can live in partnership with nature. In other words, any constitutional amendment that recognises the right to a healthy environment must recognise nature’s own right to exist, thrive, evolve and regenerate because the right to a healthy environment is necessarily premised on the environment’s right to be healthy in and of itself. In this regard, the submission encouraged Ireland to derive inspiration from the example of countries such as Ecuador which, in 2008, [amended its constitution](#) to recognise the rights of nature to exist, persist, evolve, and regenerate.

Conclusion

The Assembly presents a valuable opportunity to take up where the Supreme Court left off in “Climate Case Ireland” on the right to a healthy environment. Although the Supreme Court held that a derived right to a healthy environment could not presently be found in the Irish Constitution, it highlighted the value of recognising such a right through a democratic, deliberative process as opposed to the Court creating it. In Ireland, this would necessarily take the form of a popular referendum. However, as pointed out by EJNI, QUB School of Law, Lawyers for Nature and others, care must be taken to ensure that a rights-based approach does not merely perpetuate a worldview whereby nature only has value in so far as it services

the rights and interests of humans. In light of the significant attention the right to a healthy environment has attracted over the past year due to the UN resolutions, this will inevitably be high on the Assembly's agenda. It remains to be seen whether or not the Assembly will go one step further by incorporating the perspective of the growing rights of nature movement that recognises nature's own intrinsic right to thrive, regenerate and flourish independently of human purposes.

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