

Joint Committee on Environment and Climate Action
Examination of the Recommendations in the
Report of the Citizens' Assembly on Biodiversity Loss

Opening Statement

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Introduction

- [1] The starting point must be to recall the overarching finding of the Citizens' Assembly on Biodiversity Loss that:

[T]he State has comprehensively failed to adequately fund, implement and enforce existing national legislation, national policies, EU biodiversity-related laws and directives related to biodiversity. This must change.²

This strong indictment of the State's long-running failure to protect nature and biodiversity provides the essential background against which to examine and assess the Assembly's recommendations concerning implementation and enforcement of environmental law (including nature law). The seriousness of the Assembly's conclusion here confirms that a fundamental change in approach is required across all levels of environmental governance.

- [2] This brief statement focuses on two elements and in very general terms: (1) implementation and enforcement of environmental law and (2) environmental rights. Because the Assembly's report presents 159 recommendations across a range of areas, I identify below some of the most significant recommendations concerning environmental law and related matters.

¹ I currently serve as Chair of the United Nations Economic Commission for Europe (UN ECE) [Aarhus Convention Compliance Committee](#). This statement is made in a personal capacity.

² [Report of the Citizens' Assembly on Biodiversity Loss](#) Recommendation 2, p.13 (emphasis added).

Implementation and Enforcement of Environmental Law

- [3] We have an extensive range of environmental laws in place which include specific measures designed to protect nature and biodiversity. Implementation and enforcement of this existing body of law must be a priority.³ The Citizens' Assembly was of the view that:

[T]he laws currently in place regarding protection of the environment are not being implemented or enforced, to the detriment of biodiversity and ecosystem services across Ireland. Penalties and sanctions for breaches in environmental law need to be increased and enforced.⁴

- [4] The Assembly recommended that responsibility for the implementation and enforcement of biodiversity-related legislation by all State bodies and agencies 'must be made clear, with each body / agency held publicly accountable for their performance.'⁵ It recommended 'an immediate review' of existing frameworks and mechanisms for the implementation of biodiversity policy and legislation and identified specific areas for further investigation.⁶ It further recommended that sanctions for environmental crime should be proportionate to the offence committed / damage done and emphasised the importance of adequate resources for public authorities to support effective enforcement.⁷

- [5] To this set of recommendations I would add the importance of promoting compliance with the law with a view to avoiding (in so far as possible), or reducing, the need for enforcement – in other words adding a 'nature crime prevention' focus. This involves for example: increasing awareness of environmental laws and the legal obligations already in place to protect nature and biodiversity; improving the visibility of ongoing enforcement efforts (which have been ramped up recently); and getting the message across in clear terms that there are potentially serious consequences / penalties for failing to comply with the law.

³ Recommendation 8, p.14.

⁴ Section 1.5, p.18.

⁵ Recommendation 4, p.13.

⁶ Recommendation 44, p.18.

⁷ Recommendations 45 and 46, p.18.

- [6] The Assembly also recommended changes to existing court structures to provide for ‘an environmental court’ at the level of the District Court and the Circuit Court⁸ and took the view that all citizens ‘should be empowered with “legal standing” to protect nature and biodiversity in courts’.⁹
- [7] Specialist ‘environmental courts’ are well-established in a significant number of jurisdictions.¹⁰ Generally speaking, the main reason behind their establishment is the strong demand for specialisation / expertise due to the complex nature of both the law and the scientific and technical data involved in environmental disputes. However, their success depends on careful design and tailoring any new specialist model to the particular local legal and administrative system. A number of complex issues arise here that require careful consideration. I am happy to discuss these issues further with the Committee.
- [8] As regards ‘legal standing’, this is one of a number of fundamental issues governing access to justice in environmental matters. Beyond the issue of standing, access to justice must be affordable (legal costs can be prohibitive in practice). The remedies available, including injunctive relief where appropriate (i.e. to prevent environmental damage from arising in the first place), must be adequate and effective. These elements are essential if individuals and non-governmental organisations (NGOs) are to be empowered to enforce the law with a view to protecting nature and biodiversity. There is a strong public interest element here.
- [9] I delivered an invited presentation to the Citizens’ Assembly on Biodiversity Loss on the theme ‘Environmental Rights and Rights of Nature’ on 16 October 2022. In the course of my engagement with Assembly members and, in particular, the Q&A session after my presentation, I was struck by the seriousness the members (rightly) attached to effective implementation and enforcement of environmental law. This deep concern came across very powerfully. Members wanted mechanisms to be in place to ensure

⁸ Recommendation 27, p.16.

⁹ Recommendation 28, p.16.

¹⁰ See generally [Environmental Courts and Tribunals 2021: A Guide for Policymakers](#) (United Nations Environment Programme, 2022).

there was accountability at all levels of environmental governance and that enforcement would be meaningful in practice. The deterrent impact of effective enforcement activity was another motivating factor here.

- [10] It seems clear that the Assembly's conclusions as regards the State's failure to date to adequately protect biodiversity and its assessment of the current state of implementation of nature laws informed the specific recommendations made concerning environmental rights.

Environmental Rights

- [11] The Assembly concluded that ensuring the necessary conservation and restoration of biodiversity would require a range of measures, including amendment of the Constitution.¹¹

- [12] It recommended that a referendum be held on an amendment to the Constitution to protect biodiversity.¹² More specifically, it recommended that the proposed constitutional amendment should include both 'substantive' and 'procedural' environmental rights. As regards 'substantive' environmental rights, the recommendation referred specifically to 'e.g. a right to a clean, healthy, safe environment; a right to a stable and healthy climate; rights of future generations to these or other environmental rights'.¹³

- [13] The reference to 'procedural' environmental rights in the Assembly's report includes 'e.g. the Aarhus rights regarding access to environmental information, public participation in environmental decision-making and access to justice in environmental matters.'¹⁴ These 'Aarhus rights' are guaranteed under an international environmental treaty known as 'the Aarhus Convention' to which Ireland and the European Union are Parties.¹⁵

¹¹ Section 1.3, p.16.

¹² Recommendation 31, p.16.

¹³ Recommendation 31(a), p.16.

¹⁴ Recommendation 31(b), p.16.

¹⁵ [*Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*](#) 25 June 1998, 2161 UNTS 447 (the 'Aarhus Convention').

- [14] The ‘procedural’ rights are essential to support the realisation of the ‘substantive’ right to a healthy environment; the two sets of rights therefore complement each other.
- [15] The Assembly also went on to recommend that substantive and procedural ‘rights of nature’ should be included in the referendum.¹⁶ I understand that other witnesses at this session plan to address ‘rights of nature’ specifically. In light of this, I will not address ‘rights of nature’ in this statement.
- [16] As things stand, our Constitution is silent on the matter of environmental rights. In an important judgment delivered in July 2020 the Supreme Court indicated that rather than a court taking it upon itself to recognise a new (derived) constitutional right to a healthy environment, there is a more democratic way to go about this and that is to consider amending the Constitution by way of referendum.¹⁷
- [17] Many jurisdictions around the world recognise the right to a healthy environment in their Constitutions or in their legislative frameworks. This right may be formulated in different ways (including e.g. the right to a ‘clean’, ‘healthy’, ‘adequate’ environment; a specific reference to a ‘safe climate’ and / or the rights of future generations etc.). In July 2022, the United Nations General Assembly adopted a resolution recognising ‘the right to a clean, healthy and sustainable environment’ as a human right.¹⁸ This was a very significant development and confirmed the emergence of a high degree of consensus among States on this matter. It prompted renewed momentum for legal recognition of the right to a healthy environment at regional and national levels.
- [18] It is important to acknowledge that constitutionalising environmental rights does not necessarily guarantee better outcomes for nature or the environment more generally. But it does send a powerful signal about the importance of environmental rights in the overall environmental governance framework and their place in the national legal system. More significantly, it puts environmental rights in the frame with other constitutionally recognised rights and underpins more robust environmental policies and laws. The impact of constitutional environmental rights depends on how these

¹⁶ Recommendation 31(c) and (d), p.16.

¹⁷ [*Friends of the Irish Environment CLG v Government of Ireland*](#) [2020] IESC 49 para 8.12.

¹⁸ *The human right to a clean, healthy and sustainable environment* A/RES/76/300.

rights are formulated and on the level of implementation that is achieved in practice. Where implementation falls short, effective remedies must be in place to ensure rights are meaningful.

Concluding Observations

- [19] It is difficult to overstate the importance of a coherent, overarching policy on nature protection and restoration to underpin the degree of transformative change required. The biodiversity crisis must be addressed systematically, involving a ‘whole of Government’ co-ordinated approach with the necessary funding made available and a range of legal tools deployed to ensure accountability.
- [20] It is essential that a high-quality legislative framework is put in place with the appropriate structures and co-ordination to support enforcement activity. How we design our nature laws and the associated support structures is critical to success. The public authorities tasked with implementation and enforcement must be provided with the necessary expertise and resources to fulfil their functions.
- [21] The Assembly’s report and detailed recommendations provides very welcome visibility for the scale of the biodiversity crisis and how it can be addressed. It is notable that the Assembly’s report attracted global attention at the time of its publication, and in particular the recommendations concerning a referendum with a view to amending the Constitution to recognise environmental rights and ‘rights of nature’. There is an ever-growing awareness among the public, including children and young people,¹⁹ of the inter-linked climate and biodiversity crisis and the need for urgent action.
- [22] This Committee has the opportunity to build on the Assembly’s recommendations to shape the future direction of environmental law and governance and to lead a long-overdue process of transformation in the State’s response to the protection of nature and biodiversity.

¹⁹ See the report produced by the [Children and Young People’s Assembly on Biodiversity Loss](#) (2023).

- [23] It is important that this opportunity is seized and that a robust, evidenced-based and balanced set of recommendations with strong cross-party support emerges from the Committee's deliberations.
- [24] There is very significant momentum and political consensus for action. It now falls to the Committee to deliver the necessary roadmap to move things forward with purpose and urgency.

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