

Citizens' Assembly

From: E S [REDACTED]
Sent: Saturday 11 June 2022 20:14
To: Citizen's Assembly Submissions; Citizens' Assembly
Cc: campaign@climatecaseireland.ie
Subject: Request for topic to be added to Agenda of CA on Biodiversity Loss: Constitutional Environmental Rights

Categories: Biodiversity Loss

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Dear Dr Ní Shúilleabháin,

My name is Emer Slattery and I am writing on behalf of Climate Case Ireland to request that an item be added to the agenda of the Citizens' Assembly on Biodiversity Loss: the constitutionalisation of environmental rights.

There are a number of important reasons why we at Climate Case Ireland believe that environmental rights should be constitutionalised and we would be delighted to make a submission to the Citizens' Assembly on this if constitutional environmental rights were to be confirmed for the Assembly's agenda.

Climate Case Ireland is a climate advocacy group with a focus on the legal aspects of climate change. In 2020 we succeeded in the Supreme Court in judicial review proceedings against the Government of Ireland and its National Mitigation Plan 2017. Since winning our case we have continued to advocate for legal change concerning the climate. Our most recent campaign focuses on the possibility of constitutional environmental rights. We have formed a coalition of advocacy groups across the spectrum of society who share our belief in this important issue.

Given the background to this topic in Ireland to date (discussed below), and the urgency of the situation with regard to biodiversity loss, we believe that this will be an issue of importance to the public now more than ever. We believe that the Citizens' Assembly on Biodiversity Loss is the opportune forum for the democratic discussion of the possibility of enshrining environmental rights in Bunreacht na hÉireann.

This request is not without precedent. The Report of the Constitution Review Group, which was published in July 1996, stated that *"the majority of the Review Group favours a basic constitutional statement of the State's responsibility in relation to the environment"*. A 2004 report by the All-Party Oireachtas Committee on the Constitution noted that the Constitution should be amended and gave the following wording as an example: *"Every person shall have the right to an environment which is not detrimental to [their] health or well-being"*. A report of the Convention on the Constitution, published in 2014, noted that *"52% of Convention members felt that [the issue of the place of the environment in the Constitution] merited further consideration"*. Indeed, the environment was voted by Convention members as being a key issue that *"should be considered by the Government, the Oireachtas or any future Convention"*. This same report noted that *"[t]he word 'environment' is not mentioned in the Constitution (although Article 10 states that natural resources belong to the State). Indeed... the drafters of 1937 could hardly have foreseen the severity of the threats to Ireland's environment today"*. Furthermore, a member of the 2018 Citizens' Assembly on *How the State Can Make Ireland a Leader on Tackling Climate Change*

submitted as an ancillary recommendation that there should be a “[c]onstitutional amendment to reflect [the] right to an environment”.

In the judicial sphere, the High Court found in 2017 that there existed in the Constitution of Ireland an “*unenumerated right to a healthy environment consistent with the human dignity and well-being of citizens at large*”. This was revoked in 2020 by the Supreme Court with the then-Chief Justice remarking that “*in most of the states where a constitutional right in the environmental field has been recognised, same has been achieved by the inclusion of express wording in the constitutional instruments of the state concerned. In other words, in accordance with the appropriate process to adopt or amend the Constitution of the state concerned, a particular type of environmental right has been inserted into the Constitution. The advantage of express incorporation is that the precise type of constitutional right to the environment which is to be recognised can be the subject of debate and democratic approval*”.

All of these political and judicial developments indicate that there is a pressing need for a democratic conversation to take place regarding the constitutionalisation of environmental rights. It would seem that the present Citizens’ Assembly is the next natural stage for the progression of this public conversation.

We therefore urge you to please add the constitutionalisation of environmental rights to the agenda of the Citizens’ Assembly on Biodiversity Loss.

We are available to discuss any aspect of this request with you. We look forward to your response.

Is mise le meas,
Emer Slattery
on behalf of Climate Case Ireland

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Kind regards,
Emer Slattery (she/her)