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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**Draft Recommendation CM/Rec(2022)... of the Committee of
Ministers to member States on human rights and the protection of
the environment**

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*(adopted by the Committee of Ministers on ... 2022,
at the ... meeting of the Ministers' Deputies)*

The Committee of Ministers of the Council of Europe, under the terms of Article 15.b of the Statute of the Council of Europe (ETS No. 1),

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, *inter alia*, by promoting common standards and carrying out activities in the field of human rights and fundamental freedoms;

Recalling member States' obligation to guarantee, for everyone within their jurisdiction, the rights and freedoms defined in the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, the Convention) and relevant protocols thereto, and where relevant their obligations arising from the European Social Charter (ETS No. 35, the Charter), the European Social Charter (revised) (ETS No. 163, the revised Charter) and from other European and international human rights instruments;

Underlining the Council of Europe's commitment to environmental protection, which has resulted in the adoption of the Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104) (Bern Convention), the Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (ETS No. 150), the Convention on the Protection of the Environment through Criminal Law (ETS No. 172) and the Council of Europe Landscape Convention (ETS No. 176);

Recalling the relevant recommendations of the Parliamentary Assembly of the Council of Europe, notably Recommendation 2211 (2021) "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe";

Reaffirming that the Convention and the Charter are living instruments which must be interpreted in the light of present-day conditions;

Affirming that the present non-binding instrument recalls the existing standards contained, *inter alia*, in the Convention and the Charter and their interpretation by the European Court of Human Rights and the European Committee of Social Rights in the field of human rights and the environment;

Taking note of the "Manual on Human Rights and the Environment" containing principles emerging from the case law of the European Court of Human Rights and decisions and conclusions of the European Committee of Social Rights, published by the Council of Europe in 2006 and subsequently updated in 2012 and 2021;

Reaffirming that all human rights are universal, indivisible, interdependent and inter-related and should be enjoyed by everyone without discrimination;

Recalling that United Nations Human Rights Council Resolution 48/13 of 8 October 2021 recognised the right to a clean, healthy and sustainable environment as a human right;

Recognising that measures to address the triple planetary crisis of climate change, loss of biodiversity and pollution are essential to the better enjoyment of human rights;

Bearing in mind that life and well-being on our planet are contingent on humanity's collective capacity to guarantee both human rights and a clean, healthy and sustainable environment for present and future generations, and mindful of taking intergenerational equity into account in State actions;

Recalling the work of the United Nations Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment in particular the "Framework Principles on Human Rights and the Environment" (2018) and the Special Rapporteur's report "Right to a healthy environment: good practices" (2019);

Noting the increased recognition of some form of the right to a clean, healthy and sustainable environment in, *inter alia*, international instruments, including regional human rights instruments, and national constitutions, legislation and policies;

Expressing grave concern about the disproportionate effect environmental degradation may have on the rights of those who are in vulnerable situations and conscious of the need for States to pay particular attention to respecting, promoting and fulfilling obligations concerning human rights for persons in such situations;

Conscious of the need for States to respect the rights and knowledge of indigenous peoples and of local communities, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and international human rights law, without discrimination;

Recalling the obligations under the United Nations Convention on the Rights of the Child, which requires its States Parties to take into consideration the dangers and risks of environmental pollution to ensure that children enjoy the highest attainable standard of health and which, according to the Committee on the Rights of the Child, implies heightened obligations on States to protect children from foreseeable harm;

Recalling the obligations under the United Nations Convention on the Elimination of All Forms of Discrimination against Women and emphasising the vital role of women in matters concerning the environment and sustainable development and, in this respect, the need to promote gender equality and the empowerment of women and girls;

Stressing the fundamental importance of science and education for sustainable development and mindful that education and public awareness on environmental matters play an important role in enhancing respect for human rights and the environment;

Underscoring the positive, important and legitimate roles of all human rights defenders, including environmental human rights defenders, in promoting and protecting human rights, including their contribution to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment;

Recognising the vital role of non-state stakeholders, including civil society, national human rights institutions, regional institutions for the protection and promotion of human rights, indigenous peoples and local communities, as well as cities, regions and other sub-national authorities, in the protection of the environment;

Recalling the United Nations Guiding Principles on Business and Human Rights, Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, which underscore the responsibility of all business enterprises to respect human rights and the environment;

Considering the environmental harm stemming from armed conflicts;

Convinced that everyone has the fundamental right to freedom, equality and adequate conditions of life, and to an environment that is of sufficient quality to permit a life of dignity and well-being in which those rights and freedoms can be fully realised;

Conscious that the primary responsibility for protecting the environment and human rights lies with the member States,

Recommends that the governments of the member States:

1. reflect on the nature, content and implications of the right to a clean, healthy and sustainable environment and, on that basis, actively consider recognising at the national level this right as a human right that is important for the enjoyment of human rights and is related to other rights and existing international law;
2. review their national legislation and practice in order to ensure that they are consistent with the recommendations, principles and guidance set out in the appendix to this Recommendation;
3. ensure that this Recommendation is translated into the official language(s) of their respective countries and ensure, by appropriate means and action, a wide dissemination of this Recommendation among the competent authorities and stakeholders;
4. examine, within the Committee of Ministers, the implementation of this Recommendation no later than five years after its adoption.

Appendix to Recommendation CM/Rec(2022)...

1. In the implementation of this Recommendation, member States should ensure the respect of general principles of international environmental law, such as the no harm principle, the principle of prevention, the principle of precaution and the polluter pays principle, and take into account the need for intergenerational equity.
2. Member States should ensure, without discrimination, the effective enjoyment of the rights and freedoms set forth in the Convention for the Protection of Human Rights and Fundamental Freedoms and, when applicable, the European Social Charter and the European Social Charter (revised), including in relation to the environment.
3. Member States should take adequate measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.
4. Member States should ensure access without discrimination, *inter alia*, to information and justice in environmental matters, participation in environmental decision-making and environmental education. Member States should ensure that human rights are taken into account at all stages of the environmental decision-making process.
5. Taking into consideration their vital role in the protection of the environment, member States should consult and co-operate in the implementation of this Recommendation with sub-national entities, civil society, national human rights institutions, regional institutions for the protection and promotion of human rights, environmental human rights defenders, economic stakeholders, indigenous peoples and local communities, cities and regions.
6. Member States should encourage or, where appropriate, require business enterprises to act in compliance with their human rights responsibilities related to the environment, including by applying a smart mix of measures – national and international, mandatory and voluntary.

Explanatory memorandum to Recommendation CM/Rec(2022)...

A. Introduction

1. The present Recommendation seeks to reaffirm human rights standards that are related to environmental matters. Its aim is to assist member States, as necessary, in meeting their obligations and commitments to respect and protect human rights against breaches related to environmental factors. It thus reflects both the obligations of States not to engage in activities whose environmental impact may violate individual rights, and their positive obligations to protect those rights against undue interference caused by the environmental impact of the activities of both state and non-state stakeholders, including business enterprises, and of foreseeable natural disasters.

2. The present Recommendation is based on both binding and non-binding standards. It contains elements that may have different legal status as regards different member States: from standards based on the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention), which is legally binding for all member States; through treaty-based standards that are legally binding only for those States that have ratified the treaty in question (such as the European Social Charter/the revised European Social Charter, the Council of Europe Convention on Access to Official Documents (Tromsø Convention), or the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention); to standards based on non-binding instruments, such as previous recommendations and guidelines of the Committee of Ministers or United Nations instruments. The present Recommendation does not have any effect on the legal nature of the instruments on which it is based, or on the extent of States' existing legal obligations; nor does it seek to establish new standards or obligations.

B. The right to a clean, healthy and sustainable environment

3. In October 2021, the United Nations Human Rights Council adopted resolution 48/13 recognising a human right to a "clean, healthy and sustainable environment" and encouraging States "to adopt policies for the enjoyment of the right to a clean, healthy and sustainable environment as appropriate". Thirty-seven Council of Europe member States supported this resolution. Several instruments, constitutions and legislation had already recognised some form of this right at the regional and national levels in the European context. The present Recommendation acknowledges resolution 48/13 of the Human Rights Council and is intended to encourage States to recognise this right at the national level and to reflect on the nature, content and implications of the right.

4. When reflecting on the nature, content and implications of the right to a clean, healthy and sustainable environment, member States may recall their obligations and commitments to reduce greenhouse gas emissions and to limit global warming, to address biodiversity loss

and to prevent and reduce pollution.¹ They may also recall their existing human rights obligations relating to, for example, protection of health.²

C. General principles of environmental protection

5. For the implementation of the present Recommendation, member States should ensure respect for general principles of relevance to environmental matters that have been recognised in existing international instruments.

6. The no harm principle, originally found in the 1972 Stockholm Declaration and since included also in international treaties, holds that States have a responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas outside their jurisdiction.³

7. The principle of prevention has a clear environmental dimension, having been defined as being applicable in particular to dangerous activities and substances that are likely to cause pollution, to pose a threat to health, or to affect the natural environment, biological diversity and landscapes.⁴

8. The precautionary principle is established in international law. In the United Nations (UN) Framework Convention on Climate Change, for example, it implies measures to anticipate, prevent or minimize environmental harm, and to mitigate its adverse effects.⁵ Furthermore, as indicated in the 1992 Rio Declaration, where there are threats of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.⁶ States should take decisions based on the best available scientific knowledge.

9. The polluter pays principle presupposes that the polluter should bear the costs of the damage done to the environment, as well as the costs of preventing and eliminating pollution. It is set out in Principle 16 of the 1992 Rio Declaration.

10. States should also take into account the concept of intergenerational equity, which implies that present generations should take account of the environmental impact of their activities on future generations.⁷

¹ UN Human Rights Council, Resolution 48/14 on the Mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, adopted on 8 October 2021.

² *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits), European Committee of Social Rights (ECSR) Complaint No. 30/2005, para. 203.

³ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, Advisory opinion of 8 July 1996, ICJ Reports (1996) 226, § 29; Trail Smelter (USA v. Canada), Arbitral Award of 16 April 1938 and 11 March 1941, UN Reports of International Arbitral Awards, Vol. III pp. 1905-1982; Rio Declaration, Principle 2; ILC Draft Articles on Transboundary Harm, ILC Report (2001) GAOR A/56/10, 66.

⁴ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 1989

⁵ Rio Declaration, Article 15; UN Framework Convention on Climate Change, Article 3.

⁶ *International Federation of Human Rights Leagues (FIDH) v. Greece* (Decision on the Merits) (23 January 2013) ESCR Complaint No. 72/2011, paras. 145, 150.

⁷ See UN Framework Convention on Climate Change, Article 3.1.

11. Member States should promote, to the best of their ability, the improvement of scientific knowledge of ecosystems and the impact of human activities. They should cooperate through exchanges of scientific and technological knowledge and by enhancing the development, adaptation, dissemination and transfer of technologies on mutually agreed terms, respectful of the environment, including innovative technologies.

12. Member States should consider the impact of the measures that they take, for instance by developing, where appropriate, human rights indicators.

13. Member States should collaborate to achieve greater collective impact in international fora where environmental issues are addressed, including in their contribution to the UN 2030 Agenda for Sustainable Development, building upon the Council of Europe's approach and added value.⁸

D. Protection of existing rights

14. The obligations that arise under existing legal instruments, including the Convention, as interpreted through the case-law of the European Court of Human Rights (the Court), and, when applicable, the Charter and the revised Charter, apply also in relation to environmental matters. Specific measures may be required to ensure effective implementation of these instruments in the environmental context.

15. Member States should ensure that the right to life is not violated by environmental harm stemming from State activities or omissions, and protect it against environmental harm stemming from non-state activities. Among other measures:

a. member States should put into place a legislative and administrative framework to prevent threats to life in the context of dangerous activities and in cases of natural disasters;⁹

b. where loss of life may be linked to dangerous activities or natural disasters, member States should promptly initiate an independent and impartial investigation and, in case of violation of the right to life, provide for remedies.¹⁰

16. Member States should ensure that environmental harm stemming from State activities does not violate the right to respect for private and family life or home, and should protect that right against undue interference by environmental harm stemming from non-state activities.¹¹

17. Member States, insofar as they are parties to Protocol No. 1 to the Convention, should ensure that environmental harm stemming from State activities or omissions does not violate

⁸ Final Declaration by the Georgian Presidency of the Committee of Ministers, Environmental Protection and Human Rights, High-Level Conference organised under the aegis of the Georgian Presidency of the Committee of Ministers (Strasbourg, 27 February 2020).

⁹ Council of Europe, Manual on Human Rights and the Environment (third edition 2021), Section A, Chapter I, paras. (b), (c), (d).

¹⁰ Council of Europe, Manual on Human Rights and the Environment (third edition 2021), Section A, Chapter I, paras. (e), (f), (g).

¹¹ Council of Europe, Manual on Human Rights and the Environment (third edition 2021), Section A, Chapter III, paras. (c), (d).

the right to protection of property, and should protect that right against undue interference by environmental harm stemming from non-state activities.¹²

18. In the particular context of the environment, there exists a strong public interest in enabling individuals and groups to contribute to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment.¹³ Member States should therefore take appropriate measures to ensure that the right to freedom of expression can be effectively enjoyed, with particular regard to environmental human rights defenders.

19. Member States should take appropriate measures to ensure that the right to freedom of assembly and association can be effectively enjoyed. The ability to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of this right¹⁴ and includes unobstructed peaceful assembly and association related to environmental matters.

20. Member States should adopt measures to combat any forms of segregation on racial grounds in environmentally hazardous areas. States are required to assist people living in environmentally hazardous areas or conditions, including disadvantaged and vulnerable groups, in improving their living conditions and the environment, and to progressively ensure, so far as possible, housing in ecologically healthy surroundings.¹⁵

E. Protection of persons in vulnerable situations

21. It is generally recognised that certain groups of persons are in a particularly vulnerable situation with regard to environmental harm. Member States should take the necessary action to address the specific situation of such persons, recognising that in this context, the prohibition on discrimination may require the implementation of positive measures in favour of persons in vulnerable situations and disadvantaged groups, including indigenous peoples, children, older persons, persons with disabilities, and women and girls.¹⁶ These measures include notably the following:

- Member States should apply special safeguards, including appropriate legal protection, to protect children from foreseeable environmental harm.¹⁷ Such

¹² Council of Europe, Manual on Human Rights and the Environment (third edition 2021), Section A, Chapter III, para. (c).

¹³ *Steel and Morris v. the United Kingdom* (Judgment) (15 February 2005), ECHR Application no. 68416/01, para. 89.

¹⁴ *Koretskyy and Others v. Ukraine* (Judgment) (3 April 2008), ECHR Application no. 40269/02, para. 38.

¹⁵ *Médecins du Monde - International v. France* (Decision on the Merits) (11 September 2012), ESCR Complaint No. 67/2011, para. 21.

¹⁶ *Horváth and Kiss v. Hungary* (Judgment) (29 January 2013), ECHR Application no. 11146/11, para. 104.

¹⁷ Decision adopted by the Committee on the Rights of the Child, at its eighty-eight session (6-24 September 2021), under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 107/2019, para. 9.13.

safeguards may be necessary to ensure the child's right to survival and development, in accordance with the principle of the best interests of the child.¹⁸

- Member States should recognise that environmental degradation can disproportionately impact human rights of persons with disabilities. They should therefore ensure their full and meaningful participation and inclusion in decision-making on environmental legislation, policies, strategies and actions.¹⁹
- Member States should facilitate the access of persons in vulnerable situations to information on relevant state support services, including advice on adaptation measures and technical and financial support measures.
- Member States should collect disaggregated data, including open data, and intensify scientific research on the specific effects of environmental harm on different segments of the population.²⁰

F. Access to information and justice, participation in the decision-making process, and education on sustainable development

Access to information

22. Access to information is essential if the public is to be fully aware of environmental matters that may adversely affect their rights. Existing international instruments including the Convention, as interpreted through the caselaw of the European Court of Human Rights, the Tromsø Convention, and the Aarhus Convention establish specific requirements in this area. Those Council of Europe member States that are not parties to the Tromsø Convention or the Aarhus Convention may consider taking their provisions as examples of widely accepted and applied good practice on access to information in environmental matters.

23. The European Court of Human Rights has ruled that in certain circumstances, the right to life and the right to respect for private and family life, home and correspondence imply a specific positive obligation on public authorities to ensure a right of access to information on environmental matters. In particular, member States should ensure a right of access to information in relation to environmental issues and adequately inform the public, in an understandable way, about any life threatening emergencies, including natural disasters, such that people can make informed decisions on the risks posed to themselves and their relatives.²¹

¹⁸ UN Convention on the Rights of the Child, articles 6(2) and 3(1).

¹⁹ UN Human Rights Council Resolution 41/21 on human rights and climate change, 23 July 2019.

²⁰ UN Human Rights Council, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', Annex with 'Framework Principles on Human Rights and the Environment' (24 January 2018) UN Doc. A/HRC/37/59, Framework principle 14.

²¹ *Guerra and Others v. Italy* (Judgment) (19 February 1998), ECHR Application no. 116/1996/735/932, para. 60.

24. The Court has also ruled that when public authorities or private actors engage in dangerous activities which they know or ought to know involve adverse risks to health, member States should establish an effective and accessible procedure to enable individuals to seek all relevant and appropriate information.²²

25. The Aarhus Convention includes several specific provisions on access to information on environmental matters. Drawing on the Aarhus Convention, States should ensure that public authorities possess and update environmental information which is relevant to their functions. They should ensure that environmental information is made available to the public in a way which is transparent, and becomes progressively available in electronic databases that are easily accessible through public telecommunications networks. Additionally, States should take measures to disseminate environmental legislation, policies, international treaties, conventions and agreements, and other significant international documents on environmental issues, and should encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products.²³

26. The Aarhus Convention further guarantees, within the framework of national legislation, the right of everyone, without discrimination, to have access, on request, without having to show an interest, to official documents concerning environmental information held by public authorities. Any exceptions to this rule should be compatible with the State's international legal obligations.²⁴ A general provision to the same effect is set out in the Tromsø Convention, which guarantees the right of everyone, without discrimination on any ground, to have access, on request, to official documents held by public authorities.²⁵

27. Member States should encourage the development of solutions that enable both the public and the healthcare system to obtain rapid and up-to-date environmental information for health-related decisions.

Access to justice

28. Access to justice implies both the right to an effective remedy for violations of protected rights, and can require access to courts in order to enforce those rights. Both elements are guaranteed under the Convention, as well as other international legal provisions. Access to justice is essential to ensuring respect for rights relating to environmental matters, including the right to information or to public participation. In order to ensure that this access to justice and remedies is provided without discrimination, member States are encouraged to establish appropriate legal aid schemes for individuals.

²² Council of Europe, *Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter V, para. (h).

²³ *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Aarhus Convention) (25 June 1998), Art. 5.

²⁴ *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Aarhus Convention) (25 June 1998), Art. 4(1); UN Human Rights Council, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', Annex with 'Framework Principles on Human Rights and the Environment', (24 January 2018) UN Doc. A/HRC/37/59, Framework principle 7.

²⁵ *Council of Europe Convention on Access to Official Documents* (Tromsø Convention), Art. 2.

29. Member States should, where appropriate, enable appeal to a court by persons who consider that their rights have been violated through a decision on public action concerning complex questions of environmental and economic policy. They should also ensure access to administrative or judicial procedures to challenge acts and omissions by private actors and public authorities which contravene provisions of its national law relating to the environment.²⁶

30. Article 9 of the Aarhus Convention also sets out detailed provisions on access to justice in relation to a request for information under Article 4 of the Aarhus Convention, and claims of failure to allow for proper public participation under Article 6. Article 9 further requires States parties to ensure access to administrative or judicial procedures to challenge acts or omissions that contravene national legal provisions relating to the environment.

31. Member States are encouraged to consider including restorative measures as part of effective remedies, with the aim of reinstating or restoring damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment.²⁷

Participation in decision-making

32. When making decisions which have the potential of affecting the environment, member States should take into account the interests of individuals who are likely to be affected or have a legitimate interest. They should allow and facilitate the public to make representations in relation to such decisions, within the framework of the national legislation, and ensure that the results of the public participation are taken into account in the final decision. This includes, *inter alia*, public participation in decisions on specific activities, public participation concerning plans and programmes relating to the environment and, where appropriate, public participation in the preparation of policies and during the preparation of executive regulations and/or generally applicable legally binding normative instruments.²⁸

33. Member States should ensure equality between women and men and the systematic integration of the gender equality dimension in the framework of securing a clean, healthy and sustainable environment. They should mainstream this dimension into the planning, developing, implementing and monitoring of their environmental legislation, strategies, policies and actions. Member States should take all appropriate measures to ensure greater participation of women in environmental matters.²⁹

²⁶ *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Aarhus Convention) (25 June 1998), Art. 9(3).

²⁷ *Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment* (21 June 1993), ETS No. 150, Art. 2(8); *Convention on the Protection of Environment through Criminal Law* (1998), ETS No. 172, Art. 6.

²⁸ *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Aarhus Convention) (25 June 1998), Art. 6(8), 7, 8(c).

²⁹ Additional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (11 July 2003), Art. 18.

34. Member States should adopt policies or measures designed to promote participation by children and youth related to environmental matters, including the participation of young people belonging to groups or peoples in vulnerable situations and minorities. They should consider that environmental problems are of particular concern to the young people who will be obliged in the future to cope with the consequences of past actions, and take into account their diverse needs, circumstances and aspirations; consult them and provide them with the opportunity to present their perspectives in the decision-making process; and create opportunities for intergenerational dialogue in order to encourage mutual respect and co-operation. They should also encourage and support initiatives by young people which promote sustainable development and environmental protection.³⁰

35. Member States should enable civil society organisations promoting environmental protection and meeting any requirements under national law to participate in the decision-making process.³¹ They should make consultation and collaboration with such civil society organisations a common practice when drafting relevant legislation, policies and action plans at national, regional and local levels.

36. Member States should design, implement and promote regular national awareness-raising initiatives on environmental matters at all levels and through diverse forms of media. These initiatives should aim to increase awareness, understanding and action-preparedness among the general population, so that they may fully exercise their rights to express their views on environmental issues, understand environmental information, participate meaningfully in decision-making and, where appropriate, seek remedies for violations of their rights.³²

Decision-making process

37. Member States should introduce appropriate procedures requiring environmental assessment of their own proposed activities and those of private actors that are likely to have significant adverse effects on the environment, with a view to avoiding, preventing or reducing, and mitigating such effects. With a view to promoting sustainable development and ensuring a high level of environmental protection whilst striking a fair balance between conflicting interests, member States should, through appropriate analysis including strategic environmental assessment (SEA), integrate environmental considerations into the preparation and adoption of policies, plans and programmes which are likely to have significant effects on the environment.³³ The public should have access to such analyses and SEAs.

³⁰ UN Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992), Agenda 21, Chapter 25.4.

³¹ *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Aarhus Convention) (25 June 1998), Art. 2(5).

³² UN Human Rights Council, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', Annex with 'Framework Principles on Human Rights and the Environment' (24 January 2018) UN Doc. A/HRC/37/59, Framework principle 6.

³³ *Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)* (1991), UNTS vol. 1989, Art. 2(1); *Convention on Biological Diversity* (5 June 1992), 1760 UNTS 69, Article 14; UN General Assembly, *Rio Declaration on Environment and Development* (12 August 1992), UN Doc. A/CONF.151/26 (Vol. I), Principle 17; Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, Kiev, 21 May 2003; *Tătar v. Romania*, (Judgment) (27 January 2009), ECHR Application no. 67021/01, para. 112; *Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment*, (11); *Paris Agreement* (2015), Article 7.

38. Member States should consider adopting a strategic approach towards the human rights challenges associated with environmental degradation, by integrating the relevant issues into related action plans.

39. Member States should mainstream human rights into planning, developing, implementing and monitoring of their environmental legislation, strategies, policies and actions. They should likewise explore all possible partnerships, with a view to mainstreaming the environmental dimension into domestic activities for the promotion and protection of human rights.³⁴

40. In developing their legislation, policies, strategies and actions, member States could build upon the existing legal instruments, principles and activities of the Council of Europe.³⁵

Education on sustainable development

41. Member States should include education promoting sustainable development, covering also environmental education, in the curricula of all levels of education and training. This is key to increasing the understanding of the close relationship between humans, society, and nature, and notably, in this context, to developing both respect and understanding of the importance of the natural environment, and the necessary competencies to contribute to a more sustainable way of living.³⁶

G. Civil society and inclusivity

42. Member States should seek to address environmental matters, including their human rights aspects, with the full and meaningful participation of civil society organisations, national human rights institutions (NHRIs), regional institutions for the protection and promotion of

³⁴ Final Declaration by the Georgian Presidency of the Committee of Ministers, Environmental Protection and Human Rights, High-Level Conference organised under the aegis of the Georgian Presidency of the Committee of Ministers (Strasbourg, 27 February 2020).

³⁵ Final Declaration by the Georgian Presidency of the Committee of Ministers, Environmental Protection and Human Rights, High-Level Conference organised under the aegis of the Georgian Presidency of the Committee of Ministers (Strasbourg, 27 February 2020).

³⁶ *Convention on the Rights of the Child* (20 November 1989), 1577 UNTS 3, Art. 29(1)(e); *Convention on the Conservation of European Wildlife and Natural Habitats* (1979) ETS No. 104, Art. 3(3); *Convention on Biological Diversity* (5 June 1992), 1760 UNTS 69, Art. 13; *United Nations Framework Convention on Climate Change* (1992), UNTS vol. 1771, Art. 6(a)(i);

United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (14 October 1994), UNTS vol. 1954, Art. 19(3); UN Human Rights Council, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', Annex with 'Framework Principles on Human Rights and the Environment' (24 January 2018) UN Doc. A/HRC/37/59, Framework principle 6; UNESCO, *Berlin Declaration on Education for Sustainable Development*, World Conference held from 17 to 19 May 2021.

human rights, indigenous peoples, and local communities most directly affected by particular concerns.

43. Member States should respect and protect the right of environmental human rights defenders to strive to promote and protect, in a peaceful manner, a clean, healthy and sustainable environment, in accordance with the rights to freedom of expression and freedom of assembly and association. They should ensure an enabling legal framework and a conducive political and public environment for human rights defenders, enabling individuals, groups, civil society organisations and NHRIs to freely carry out such activities, on a legal basis, consistent with international law and standards. Member States should additionally take measures to protect environmental human rights defenders from violations committed by both State and non-State actors, including any form of penalisation, persecution or harassment.³⁷

44. Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and covers linkages between human rights and the environment. They should ensure that NHRIs can operate independently, in an effective manner and in a climate of impartiality, integrity, transparency and fairness.

45. Member States should ensure the rights of indigenous peoples and local communities, in accordance with the UN Declaration on the Rights of Indigenous Peoples and international human rights law. In particular, they should recognise the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy, and the rights of the peoples concerned to the natural resources pertaining to their lands.³⁸

46. Member States should take measures to respect, preserve and maintain knowledge, innovations and practices of indigenous peoples and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. Member States should also promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices, and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.³⁹

H. Business enterprises

47. Member States should encourage or, where appropriate, require business enterprises to act in compliance with their human rights responsibilities related to the environment, including by applying a smart mix of measures – national and international, mandatory and

³⁷ UN Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights defenders' (3 August 2016), UN Doc. A/71/281, para. 3; UN Human Rights Council, Resolution 48/13 on "The human right to a safe, clean, healthy and sustainable environment", adopted on 8 October 2021, preamble; Aarhus Convention, Art. 4(8).

³⁸ International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention* (27 June 1989), No. 169, Art. 14(1), 15(1); UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples (13 September 2007), UNGA Res. A/RES/61/295, Art. 26.

³⁹ *Convention on Biological Diversity* (5 June 1992), 1760 UNTS 69, Art. 8(j).

voluntary.⁴⁰ They should also incorporate the environmental dimension into national action plans dealing with human rights and business.⁴¹

48. Member States should apply such measures as may be necessary to encourage or, where appropriate, require business enterprises that are domiciled within their jurisdiction to apply human rights due diligence throughout their operations, and those that conduct substantial activities within their territory to carry out human rights due diligence in respect of such activities, as appropriate to the size of the business enterprise and the nature and context of the operations. In doing so, businesses should avoid causing or contributing to adverse human rights impacts through environmental harm, address such impacts when they occur, and seek to prevent or mitigate adverse human rights impacts that are directly linked to their business activities.⁴²

49. Member States should, as part of providing protection against business-related human rights abuse resulting from environmental harm, take appropriate steps, in accordance with their international obligations, to ensure that when such abuses occur, those affected have access to effective judicial and non-judicial remedies.⁴³

⁴⁰ *Hatton and Others v. the United Kingdom* (Judgment) (8 July 2003), ECHR Application no. 36022/97, para. 119; *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005, para. 192; UN Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, endorsed in its resolution 17/4 of 16 June 2011, Commentary to Principle 3; UN Human Rights Council, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (24 January 2018) UN Doc. A/HRC/37/59, Framework principle 12; *Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business* (Adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers' Deputies), para. 13.

⁴¹ Final Declaration by the Georgian Presidency of the Committee of Ministers, Environmental Protection and Human Rights, High-Level Conference organised under the aegis of the Georgian Presidency of the Committee of Ministers (Strasbourg, 27 February 2020):

⁴² *Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business* (Adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers' Deputies), para. 20;

UN Human Rights Council, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', Annex with 'Framework Principles on Human Rights and the Environment', (24 January 2018) UN Doc. A/HRC/37/59, Framework principle 12; UN Human Rights Council, Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Annex with *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (21 March 2011), UN Doc. A/HRC/17/31; OECD (2011), OECD Guidelines for Multinational Enterprises; OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct.

⁴³ UN Human Rights Council, Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Annex with *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (21 March 2011), UN Doc. A/HRC/17/31, III.A.; *Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business* (Adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers' Deputies), para. 31; UN Human Rights Council, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', Annex with 'Framework Principles on Human Rights and the Environment', (24 January 2018) UN Doc. A/HRC/37/59; Framework Principle 12; *Convention on the Protection of Environment through Criminal Law* (1998), ETS No. 172, Preamble, Art. 9.

50. Particularly in dangerous industries where health and safety risks, including exposure to environmental pollution, cannot be eliminated, member States should take proactive preventive and protective measures prior to exposure to such risks.⁴⁴

51. Member States should adopt, enforce and effectively monitor legislation on safety and security at the workplace to ensure that workers' rights are not affected by environmental degradation. They should provide precise and plausible explanations and information on developments in the number of occupational accidents and on measures taken to ensure the enforcement of regulations and hence to prevent such accidents.⁴⁵

⁴⁴ *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits), ECSR Complaint No. 30/2005, para. 235; EU Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC), Articles 4.1 and 5.1.

⁴⁵ *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits), ECSR Complaint No. 30/2005, paras. 223, 224, 228, 231