

## **Prof. John KNOX**

Former UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, *Henry C. Lauerman Professor of International Law*, Wake Forest University School of Law, USA / *Ancien Rapporteur spécial de l'ONU sur la question des obligations relatives aux droits de l'homme se rapportant aux moyens de bénéficier d'un environnement sûr, propre, sain et durable*, *Henry C. Lauerman Professor of International Law*, *École de droit de l'Université Wake Forest, USA*

### ADDRESSING THE QUESTION:

***“How are environmental aspects of human rights law related to environmental law, including the legal framework relating to human rights and the environment and the status and enforcement of existing standards?”***

SEPTEMBER 13, 2022

Distinguished Members of the Steering Committee for Human Rights, thank you for inviting me to speak at this meeting of the Drafting Group on Human Rights and the Environment.

I am the Henry C. Lauerman Professor of International Law at Wake Forest University in the United States, and the former United Nations Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

I had the honor of being the first person appointed to the UN mandate on human rights and the environment in 2012. In 2015, the Human Rights Council renewed the mandate and reappointed me to another three-year term. I concluded my term in 2018 with the presentation to the Council of Framework Principles on Human Rights and the Environment that summarized how international human rights norms have been applied to environmental issues.

In my final report to the Council and in a joint report to the UN General Assembly with my successor, Professor David Boyd, I urged the United Nations to recognize for the first time the human right to a clean, healthy, and sustainable environment. As you know, thanks to the efforts of many civil society organizations, governments, and others, the United Nations has now done so. In October 2021, the Human Rights Council adopted a resolution recognizing the right to a clean, healthy, and sustainable environment by a vote of 43-0, and on July 28, 2022, the General Assembly adopted resolution 76/300, which recognized the right by the overwhelming margin of 161-0.<sup>1</sup>

Members of the Council of Europe played a critical role in this effort. Slovenia and Switzerland were among the five primary sponsors of the resolutions at the Council and the General Assembly, and every current member of the Council of Europe voted for recognition of the right.<sup>2</sup> Ironically, as a result of the recognition by the United Nations, the only remaining international human rights system that

---

<sup>1</sup> Human Rights Council res. 48/13 (8 Oct. 2021); General Assembly res. 76/300 (28 July 2022).

<sup>2</sup> Every current member of the Council of Europe serving on the Human Rights Council in 2021 voted for resolution 48/13, and every current member of the Council of Europe voted for General Assembly resolution 76/300. One former member, Russia, abstained in both votes.

does not recognize the right to a healthy environment is the Council of Europe. Your consideration of this issue is, therefore, highly welcome.

In my statement, I will first provide an overview of how the relationship of human rights and the environment has developed, and then describe what explicit recognition of the right to a healthy environment adds to the existing body of environmental human rights law.

## **I. The Evolution of Environmental Human Rights Law**

The relationship between human rights and the environment is interdependent: (a) the full enjoyment of many human rights, including the rights to life and health, depends on an environment that is healthy for human beings; and (b) the exercise of human rights, including the rights of freedom of expression and peaceful association, and the rights to information, participation in governance, and access to justice, is necessary for individuals and communities to be able to advocate for and achieve satisfactory levels of environmental protection.

The evolution of the relationship of human rights and the environment has occurred along three main paths: (a) the recognition of the human right to a healthy environment; (b) the inclusion of rights in multilateral environmental agreements; and (c) the application of existing human rights to environmental issues.

### **A. Recognition of the Human Right to a Healthy Environment**

The first, and in some ways the simplest, path to linking human rights and the environment is to recognize the human right to a healthy environment. Before global recognition, about 100 states had already recognized some form of the right in their constitutions, including most of the member states of the Council of Europe. At the regional level, the African Charter on Human and Peoples' Rights, which has 54 parties, was the first human rights treaty to include the right, in 1981; the San Salvador Protocol to the American Convention, which has 19 parties, was the second, in 1988. Other regional instruments that recognize the right include the 2004 Arab Charter on Human Rights and the 2012 Human Rights Declaration of the ASEAN countries.

Although no Council of Europe instrument recognizes the right, the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, which has 47 parties, states in article 1 that each party shall guarantee the rights of access to information, public participation, and justice in environmental matters "in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being."

As noted above, the UN General Assembly finally recognized the human right to a clean, healthy, and sustainable environment earlier this year, in resolution 76/300. After noting that "a vast majority of States have recognized some form of the right to a clean, healthy and sustainable environment through international agreements, their national constitutions, legislation, laws or policies," the resolution states simply that the General Assembly:

- "1. *Recognizes* the right to a clean, healthy and sustainable environment as a human right;
2. *Notes* that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;
3. *Affirms* that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law; [and]

4. *Calls upon States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.*"

The level of support for resolution 76/300 was much higher than that accorded to comparable recent resolutions on human rights adopted by the General Assembly. For example, in 2019, the General Assembly adopted a declaration on the rights of peasants and others working in rural areas by a vote of 121 in favor out of 183 voting, or 66.1 percent of the total. Eight countries voted against (including the United Kingdom and the United States), and 54 abstained. In 2010, the General Assembly adopted a resolution recognizing the human right to water and sanitation by a vote of 122 in favor out of 163, or 74.8 percent. No states voted against the resolution but 41 states abstained, including many members of the Council of Europe. In this light, the support for resolution 76/300 is particularly remarkable. Out of 169 states voting, 161 (or 95.3 percent) voted in favor, and only eight abstained.<sup>3</sup>

## **B. Inclusion of Rights in Multilateral Environmental Agreements**

The second path for development of environmental human rights norms is through multilateral environmental agreements, or MEAs. It should be noted that MEAs almost never refer to human rights explicitly. The principal exception is the Paris [Climate] Agreement of 2015, whose preamble states that "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity." Although the preambular language does not have operational effect, it may help to spur governments to pay greater attention to human rights in their responses to climate change.

Much more common is for MEAs to include language that implicitly reflects and supports human rights norms, especially rights of access to environmental information, public participation in environmental decision-making, and effective remedies for environmental harm. The most important global instrument in this respect is the 1992 Rio Declaration, Principle 10 of which states:

*Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.*

Two regional agreements codify the Principle 10 access rights and define the obligations of states in more detail. The Aarhus Convention, adopted by the UN Economic Commission for Europe in 1998, sets out detailed requirements that each of its parties: provide environmental information on request; update and disseminate environmental information; provide for public participation in environmental decision-making; and ensure that members of the public have access to legal remedies for failures to provide environmental information and facilitate public participation. In 2018, Latin American and Caribbean countries adopted the Escazú Agreement, which also includes detailed provisions on each of these points. It also requires each of its parties to protect environmental defenders: "persons, groups and organizations that promote and defend human rights in environmental matters."<sup>4</sup>

---

<sup>3</sup> The eight states that abstained were Belarus, Cambodia, China, Ethiopia, Iran, Kyrgyzstan, Russia, and Syria. Two weeks after the vote, Kyrgyzstan stated that it wished to make clear that it now supports recognition.

<sup>4</sup> Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (adopted 4 March 2018), art. 9. The Escazú Agreement entered into force in 2021 and now has 14 parties.

## C. Greening Human Rights

The third path for the evolution of environmental human rights norms is the application by human rights tribunals and other bodies of existing rights, such as rights to life and health, to environmental issues. In addition, international instruments set out indigenous and tribal rights, many of which directly relate to the environment.<sup>5</sup>

The application of specific human rights to environmental issues, which has been called “greening” human rights, has occurred in many different forums, which have construed many different human rights instruments. Nevertheless, and perhaps surprisingly, it has resulted in a coherent set of norms. After briefly reviewing the jurisprudence of the European system, the other regional human rights systems, and the human rights treaty bodies, I will describe the Framework Principles on Human Rights and the Environment that I presented to the Human Rights Council in 2018, which summarizes the emerging norms.

### 1. The European Human Rights System

In the process of greening human rights, the European Court of Human Rights has taken a leading role. Since 1994, it has developed an extensive environmental jurisprudence based largely on article 2 (right to life) and article 8 (right to private and family life). Under article 2, the Court has held that states must establish legislative and administrative frameworks that effectively deter threats to the right to life, including by regulating the licensing and supervision of hazardous and industrial activities and by providing the public information about such activities and natural disasters such as floods and mudslides.<sup>6</sup> If loss of life nevertheless results, states must conduct independent and impartial investigations and punish breaches as appropriate.<sup>7</sup> With respect to article 8, the Court has also held that states must assess the effects of proposed activities that cause environmental harm and infringe human rights, make environmental information public, and allow the individuals concerned to have access to judicial remedies.<sup>8</sup>

Similarly, the European Committee for Social Rights has interpreted the right to health in article 11 of the European Social Charter to require states to protect against environmental harm, including in specific to take measures to prevent air pollution by, among other things, informing and educating the public about environmental problems, introducing threshold values for emissions, measuring air quality, monitoring health risks, and enforcing standards once adopted.<sup>9</sup> The Committee has said that in setting standards, states should take into account the norms and guidelines set by national and international bodies.<sup>10</sup>

### 2. Other Regional Human Rights Systems

The human rights commissions and courts in the other two major regional human rights systems have developed an environmental human rights jurisprudence similar in many ways to that of the European

---

<sup>5</sup> The two most important sources of indigenous and tribal rights relating to the environment are International Labour Organisation Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, adopted in 1989, and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in 2007. Although most of the 24 parties to the ILO Convention are in Latin America, six Council of Europe members also belong: Denmark, Germany, Luxembourg, Netherlands, Norway, and Spain. Although UNDRIP is not legally binding in itself, states have generally accepted it as setting benchmark standards in relation to indigenous rights.

<sup>6</sup> See *Brincat and others v Malta*, No. 60908/11 (2014) (workplace exposure to asbestos); *Öneryıldız v Turkey*, No. 48939/99 (2004) (improper maintenance of municipal rubbish tip); *Kolyadenko v Russia*, No. 17423/05 (2012) (flash flood); *Budayeva v Russia*, No. 15339/02 (2008) (mudslide).

<sup>7</sup> See Council of Europe, *Manual on Human Rights and the Environment* (2d ed. 2012), pp. 38-39.

<sup>8</sup> *Taşkın and others v Turkey*, No. 46117/99 (2006); *Hatton and others v United Kingdom*, No. 36022/97 (2003).

<sup>9</sup> *Marangopoulos Foundation for Human Rights v Greece*, No. 30/2005 (2006).

<sup>10</sup> *International Federation for Human Rights (FIDH) v Greece*, No. 72/2011 (2013).

system. For example, a famous decision by the African Commission on Human and Peoples' Rights held that the Nigerian government, by causing massive oil pollution in the Niger delta, had violated the rights of the Ogoni people, including their rights to health and to live in a healthy environment. The Commission stated that Nigeria had duties to take "reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources", and that it should also require and publish environmental and social impact studies, undertake appropriate monitoring and provide information to exposed communities, and provide meaningful opportunities for individuals to be heard and to participate in development decisions affecting their communities.<sup>11</sup>

Many of the important decisions by the Inter-American Commission and Court of Human Rights in this field have involved the rights of indigenous and tribal peoples. Drawing on ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples, the Court has held that states have obligations to delimit and title the ownership of the lands traditionally occupied by indigenous and tribal peoples, consult with them regarding any proposed concessions or other activities that may affect their lands and natural resources, ensure that no concession will be issued without a prior environmental and social impact assessment, and guarantee that they receive a "reasonable benefit" from any such plan if approved. Regarding large-scale development or investment projects that would have a major impact within the territory of indigenous or tribal peoples, the state may only proceed if it obtains "their free, prior, and informed consent, according to their customs and traditions."<sup>12</sup>

In 2017, the Inter-American Court published perhaps the most comprehensive opinion yet issued by any regional body on human rights and the environment. In response to a request by Columbia seeking clarification of the application of the American Convention on Human Rights to environmental harm, the Inter-American Court issued an advisory opinion that, among other things, indicates that the responsibility of states under the American Convention extends to actions within their territory or control that cause transboundary environmental harm, and that the rights to information, public participation, and access to justice are integral to the rights of life and personal integrity in the environmental context.<sup>13</sup>

### **3. Human Rights Treaty Bodies**

United Nations human rights treaty bodies have applied human rights to environmental issues in the course of their oversight of states' compliance with the major human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Like the regional tribunals, they have interpreted a variety of human rights to give rise to remarkably similar obligations to protect the environment.

For example, the Committee on Economic, Social and Cultural Rights, which oversees the ICESCR, has interpreted the right to health to include "the requirement to ensure an adequate supply of safe and potable water and basic sanitation; [and] the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health."<sup>14</sup> Similarly, it has stated that, with regard to the right to water, parties to the ICESCR must refrain from polluting water through waste from state-owned facilities, and also adopt the necessary measures to restrain third parties from polluting water sources.<sup>15</sup>

---

<sup>11</sup> Social and Economic Rights Action Centre v Nigeria, No. 155/96 (2001), paras. 52, 53.

<sup>12</sup> Saramaka People v Suriname, No. 172 (2007), paras. 129, 134.

<sup>13</sup> Advisory Opinion OC-23/17 (2017).

<sup>14</sup> General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (2000), para. 15.

<sup>15</sup> General Comment No. 15: The right to water, UN Doc. E/C.12/2002/11 (2003), paras. 21, 23.



In 2018, the Human Rights Committee, which oversees the ICCPR, issued a General Comment on the right to life, which emphasizes that States' duty to protect life also implies that they should take appropriate measures to address the conditions in society that may threaten life, including degradation of the environment.<sup>16</sup> It states:

*“Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. Obligations of States parties under international environmental law should thus inform the contents of article 6 of the Covenant [on the right to life], and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors. States parties should therefore ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach.”<sup>17</sup>*

In 2019, in a case communicated to the Human Rights Committee pursuant to the First Optional Protocol to the ICCPR, the Committee held that Paraguay had violated its obligations under article 6 (on the right to life) and article 17 (on the right to private and family life) of the ICCPR. Citing decisions of the European Court of Human Rights holding that severe environmental degradation can give rise to a violation of the right to life, the Committee held that Paraguay's failure to adequately regulate large-scale spraying with toxic agrochemicals and investigate the death of an agricultural worker exposed to such chemicals violated its obligations under article 6.<sup>18</sup> Similarly, and again citing decisions of the European Court of Human Rights, the Committee held that “when pollution has direct repercussions on the right to one's private and family life and home, and the adverse consequences of that pollution are serious because of its intensity or duration and the physical or mental harm that it does, then the degradation of the environment may adversely affect the well-being of individuals and constitute violations of private and family life and the home,” and concluded that Paraguay's failures had violated the applicants' right to private and family life protected by article 17 of the ICCPR.<sup>19</sup>

Treaty bodies, like regional bodies, are increasingly being asked to decide climate cases. Both the Human Rights Committee and the Committee on the Rights of the Child have issued decisions that rejected climate claims largely or completely on procedural grounds, but that included language indicating a willingness to apply human rights standards in the climate context.<sup>20</sup> In 2019, five treaty bodies issued a joint statement on climate change, in which they said that “for States to comply with their human rights obligations and to realize the objectives of the Paris Agreement, they must adopt and implement policies aimed at reducing emissions. These policies must reflect the highest possible ambition, foster climate resilience and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development.”<sup>21</sup>

---

<sup>16</sup> General Comment No. 36 [on the right to life], UN Doc. CCPR/C/GC/36 (2018), para. 26.

<sup>17</sup> Ibid, para. 62.

<sup>18</sup> Portillo Cáceres and others v Paraguay, No. \_\_\_ (2019), para. 7.5.

<sup>19</sup> Ibid, para. 7.8.

<sup>20</sup> See Human Rights Committee, Teitiota v New Zealand, UN Doc. CCPR/C/127/D/2728/2016 (2020); Committee on the Rights of the Child, Sacchi et al v Germany, UN Doc. CRC/C/88/D/107/2019 (2021).

<sup>21</sup> The statement is available at <https://www.ohchr.org/en/statements/2021/12/hri20191-five-un-human-rights-treaty-bodies-issue-joint-statement-human-rights>. The five treaty bodies were the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities.

#### 4. The Framework Principles on Human Rights and the Environment

In 2018, in my last report to the Human Rights Council, I presented Framework Principles on Human Rights and the Environment that summarize the human rights obligations of states relating to the environment.<sup>22</sup> The Framework Principles and their accompanying commentary do not create new obligations, but rather reflect the application of existing human rights obligations in the environmental context. Many of the obligations described in the Principles and commentary are based directly on treaties or binding decisions from human rights tribunals, while others draw on statements of human rights bodies that have the authority to interpret human rights law but not necessarily to issue binding decisions. As I stated to the Council, however, despite the diversity of the sources, their views on the relationship of human rights law and the environment are remarkably coherent. To protect against environmental harm to the full enjoyment of a wide variety of human rights, tribunals and other human rights bodies have interpreted those rights to give rise to essentially the same set of obligations.

The Framework Principles describe procedural obligations of States, including: to respect and protect the rights to freedom of expression, association, and peaceful assembly in relation to environmental matters; to provide for environmental education and public awareness; to provide public access to environmental information; to require the prior assessment of the possible environmental and human rights impacts of proposed projects and policies; to provide for and facilitate public participation in decision-making related to the environment; and to provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.<sup>23</sup>

The Framework Principles also outline human rights obligations relating to substantive standards. Human rights bodies have held that states have discretion in determining the appropriate levels of environmental protection, taking into account the need to balance the goal of preventing all environmental harm with other social goals. However, the establishment and implementation of appropriate levels of environmental protection must always comply with obligations of non-discrimination, and there is a strong presumption against regressive measures in relation to the progressive realization of economic, social, and cultural rights. Other factors relevant to assessing substantive environmental standards include whether the state has taken into account relevant international standards, such as those promulgated by the World Health Organization.<sup>24</sup> Once adopted, states must monitor and effectively enforce compliance with the standards by private actors as well as governmental authorities.<sup>25</sup> With respect to global or transboundary environmental harm that adversely affects human rights, states have obligations of international cooperation, which mean that they must work together to address common problems such as climate change and the global loss of biodiversity.<sup>26</sup>

The obligations of states under human rights law to prohibit discrimination and to ensure equal and effective protection against discrimination apply to the equal enjoyment of human rights relating to the environment.<sup>27</sup> States therefore have obligations to protect against environmental harm that results from or contributes to discrimination, to provide for equal access to environmental benefits, and to ensure that their actions relating to the environment do not themselves discriminate. In addition, states must take additional steps to protect the rights of those who are particularly vulnerable to or at risk from environmental harm, including environmental human rights defenders and indigenous peoples.<sup>28</sup>

---

<sup>22</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/HRC/37/59 (2018), annex. The Council took note with appreciation of the report presenting the Framework Principles in its resolution 37/8, para. 3.

<sup>23</sup> *Ibid.*, paras. 10-30 (Framework Principles 5-10).

<sup>24</sup> *Ibid.*, paras. 31-32 (Framework Principle 11).

<sup>25</sup> *Ibid.*, paras. 34-35 (Framework Principle 12).

<sup>26</sup> *Ibid.*, paras. 36-39 (Framework Principle 13).

<sup>27</sup> *Ibid.*, paras. 7-9 (Framework Principle 3).

<sup>28</sup> *Ibid.*, paras. 10-11, 40-53 (Framework Principles 4, 14, 15).

## II. The Additional Value of Recognition of the Right to a Healthy Environment

In light of the extensive environmental human rights law jurisprudence already developed by the European Court of Human Rights and, to a much lesser degree, by the European Committee for Social Rights, one might ask what value would be added by recognition of a human right to a healthy environment. In this section, I highlight three overlapping benefits that are not exhaustive, but that highlight the benefits that recognition would provide: (a) it would clarify that the right to a healthy environment is on the same level as other rights necessary for human dignity, freedom, and equality; (b) it would integrate the existing environmental human rights jurisprudence; and (c) it would provide a basis for closing gaps in that jurisprudence.

### A. Clarifying the Fundamental Importance of Environmental Protection

Wherever recognition has occurred, from national constitutions to the UN General Assembly, it has served the vital function of reinforcing the understanding that human rights norms require protection of the environment and that environmental protection depends on the exercise of human rights. Recognition highlights that the right to environmental protection has the same level of importance as other rights that are fundamental to human dignity, equality and freedom.<sup>29</sup> Recognition thereby catalyzes further actions. As the current UN Special Rapporteur on human rights and the environment, David Boyd, has explained, recognition of the right at the national level has had concrete and lasting effects. For example, his research found that at least 80 states enacted stronger environmental laws as a result of the incorporation of the right in their national constitutions. More generally, “nations with the right to a healthy environment in their constitutions have smaller ecological footprints, rank higher on comprehensive indices of environmental indicators, are more likely to ratify international environmental agreements and have made faster progress in reducing emissions of sulphur dioxide, nitrogen oxides and greenhouse gases than nations without such provisions.”<sup>30</sup>

Including the right in a protocol to the European Convention on Human Rights would directly lead to these benefits by encouraging states that have not yet adopted the right to do so, and by encouraging states that have adopted it to take more active measures to implement it, if and as necessary. As noted above, most Council of Europe members have already recognized some form of the right to a healthy environment in their national constitutions or laws. However, according to a recent study, thirteen states in the Council of Europe have not yet done so: Austria, Cyprus, Denmark, Germany, Ireland, Liechtenstein, Luxembourg, Malta, Monaco, San Marino, Sweden, Switzerland, and the United Kingdom.<sup>31</sup>

To provide a concrete example, recognition of the right would clarify that those working to protect the environment, often called environmental defenders, are also human rights defenders. Although this distinction may seem semantic, it is actually critically important. Over the last decade, it has become evident that environmental human rights defenders are the single most at-risk group of human rights defenders in the world. More than 200 are killed every year; countless more are harassed, threatened,

---

<sup>29</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/73/188 (2018), para. 39. This report was a joint report from the outgoing and incoming Special Rapporteurs; it urged the General Assembly to recognize the right to a healthy environment and explained the benefits of doing so.

<sup>30</sup> Ibid, para. 44 (citing David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (2012), pp. 253-277).

<sup>31</sup> Harry Balfour-Lynn and Sue Willman, Environmental Rights Recognition Project, “The right to a healthy environment: The case for a new Protocol to the European Convention on Human Rights (King’s College London, 2022), p. 7 n.12; see also David R. Boyd, “Catalyst for Change: Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment, in John H. Knox and Ramin Pejan (eds.), *The Human Right to a Healthy Environment* (2018), pp. 19-23 (listing states in the world that have and have not recognized the right).



unlawfully detained, beaten, and tortured.<sup>32</sup> Civil society organizations have raised awareness of the attacks on them, and human rights experts, including the Special Rapporteur on human rights defenders, have stressed that they are entitled to the same protections as other human rights defenders, in particular those set out in the United Nations Declaration on Human Rights Defenders.<sup>33</sup> But environmental defenders continue to be at great risk, in part because they are not seen as human rights defenders, and because the threats facing them are not understood to be part of a connected set of issues.<sup>34</sup>

States and regions that do not explicitly recognize the right to a healthy environment as a human right are at a disadvantage in working to ensure that these environmental defenders are treated as human rights defenders. It is an important step in the right direction that the Meeting of the Parties to the Aarhus Convention decided in 2021 to establish a rapid response mechanism to protect environmental defenders, and decided in June 2022 to elect Michel Forst, the former UN Special Rapporteur on human rights defenders, to be the first special rapporteur in this new system. Nevertheless, recognition of the right to a healthy environment on a regional level in Europe would also greatly help to promote awareness and protection of these defenders.

## **B. Integrating the Existing Body of Environmental Human Rights Law**

Another important benefit of recognition of the human right to a healthy environment in the European system is that it would provide a basis for integrating its large and growing environmental human rights jurisprudence. Formal recognition of the right would help to ensure that the jurisprudence continues to develop in a coherent and consistent way, by emphasizing that the different strands of jurisprudence, each based on its own underlying right, are actually all part of the same set of norms.

In presenting the Framework Principles on Human Rights and the Environment to the Human Rights Council, I emphasized that they did not obviate the need for recognition of the human right to a healthy environment, but rather helped to explain what the content of such a right would include. The process of “greening” human rights had already clarified what human rights law requires with respect to environmental protection. As a result, the human right to a healthy environment is not an empty vessel waiting to be filled; on the contrary, its content has already been clarified, through recognition by human rights authorities that a safe, clean, healthy and sustainable environment is necessary for the full enjoyment of many human rights, including the rights to life, health, and private and family life.

In the words of Marcos Orellana, recognition of the right to a healthy environment allows the existing “normative *acquis*” to be integrated, so that the “normative content of human rights in respect of the environment would thus no longer be dispersed or fragmented across a range of rights, but would come together under a single normative frame.”<sup>35</sup> Orellana has also emphasized the possibility that recognition opens for further progressive development on the basis of this existing framework, and he has stated such a potential “cannot be overstated, in light of the serious environmental and social crisis facing the planet.”<sup>36</sup>

---

<sup>32</sup> Global Witness publishes an annual report on the number of killings of environmental defenders. The most recent report, entitled *Last Line of Defence*, was published in September 2021 and is available at <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>.

<sup>33</sup> See Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/71/281 (2016) (drawing attention to the increasing violence against environmental defenders).

<sup>34</sup> See generally John H. Knox, “Environmental Human Rights Defenders: A Global Crisis” (2017), available at <https://www.universal-rights.org/urg-policy-reports/environmental-human-rights-defenders-ehrds-risking-today-tomorrow/>.

<sup>35</sup> Marcos Orellana, “Quality Control of the Right to a Healthy Environment,” in *The Human Right to a Healthy Environment*, pp. 169, 176.

<sup>36</sup> *Ibid* at 176-77.

In this respect, it is important for the European system, and in particular for the European Court of Human Rights, not to rest on its laurels. Although it has long been at the forefront of greening human rights, especially the rights to life and private and family life, it is also true that its caselaw “contains features that arguably serve to restrict the application of the otherwise progressive willingness to entertain environmental claims under the Convention.”<sup>37</sup> Inclusion of the right would provide a stronger basis for the Court to consider such claims and to continue to build on its existing basis of environmental human rights jurisprudence.

### C. Closing Gaps in the Jurisprudence

In addition to providing a basis for focused and rejuvenated attention to environmental issues generally, there is at least one important gap in the jurisprudence of the European Court that recognition of the human right to a healthy environment should close. In 2003, in *Kyrtatos v Greece*, the Court rejected claims arising from the destruction of a wetland (a swamp) adjacent to the property of the applicants, on the ground that “neither Article 8 nor any of the other Articles of the Convention are specifically designed to provide general protection of the environment as such.”<sup>38</sup> The Court stated, “even assuming that the environment has been severely damaged by the urban development of the area, the applicants have not brought forward any convincing arguments showing that the alleged damage to the birds and other protected species living in the swamp was of such a nature as to directly affect their own rights.”<sup>39</sup>

Recognition of the right to a healthy environment would establish the linkage between human beings and natural protection that the *Kyrtatos* decision failed to find. It would make it possible, at least in principle, for claims to be brought for substantial environmental harm that affected the applicants, without having to show that the harm had specifically violated their rights to life or their family and private life. By so doing, recognition would close an important gap in the law.

### III. Conclusion

In my statement, I have not addressed which vehicle would be the best way to incorporate the right within the European human rights system. Other experts speaking to the Committee at this meeting have greater familiarity with the European system and can assess specific options better than I can.

However, in closing, I want to emphasize that it is of paramount importance that the Council of Europe not act in a way that could be interpreted as taking a step back from the existing body of environmental human rights norms developed by the European Court. In particular, it would be an error to think of this right as inherently an economic, social, or cultural right, and therefore best linked to the Social Charter. In my view, the right to a healthy environment should not be so limited. Its connections to civil and political rights are at least as strong as its connections to economic, social and cultural rights. And, as I have tried to show, the obligations on states that have been derived from various human rights are very similar in any event.

For the last quarter of a century, the European Court of Human Rights has led the way in greening human rights. It has been the international tribunal that has most actively and effectively linked human rights and the environment, and its decisions have been enormously influential with respect to other tribunals and the UN human rights system. The Council of Europe should avoid sending any signal that the European Court is no longer the appropriate forum in the European system for hearing such cases. On the contrary, the best possible step in this time of increasing and multiple environmental crises would be to further strengthen the ability of the European Court to bring human rights law to bear on environmental issues.

---

<sup>37</sup> Ole Pedersen, “The European Court of Human Rights and International Environmental Law,” in *The Human Right to a Healthy Environment*, pp. 86, 87.

<sup>38</sup> *Kyrtatos v Greece*, No. 41666/98 (2003), para. 52.

<sup>39</sup> *Ibid.* para. 53.