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16/11/2021

Please note that the document contains drafting work in progress.

**Preliminary draft recommendation
on human rights and the protection of the environment**

as prepared by the Drafting Group on Human Rights and Environment (CDDH-ENV)¹

*Promotion and protection of human rights
by ensuring a clean, healthy and sustainable environment*

¹ At its second meeting on 3-5 November 2021, the CDDH-ENV held a first reading of the document containing elements for consideration in view of a non-binding instrument on human rights and the protection of the environment. Subsequently, it started at second reading of the preamble and the operative part until the Appendix.

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[PREAMBLE]

The Committee of Ministers,

[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;

[2.] R e c a l l i n g m e m b e r s o f t h e C o u n c i l o f E u r o p e t o s e c u r e t o e v e r y o n e w i t h i n t h e i r j u r i s d i c t i o n t h e r i g h t s a n d f r e e d o m s d e f i n e d i n t h e E u r o p e a n C o n v e n t i o n o n H u m a n R i g h t s (E T S N o. 5) (h e r e a f t e r " t h e C o n v e n t i o n ") a n d t h e p r o t o c o l s t h e r e t o , i n c l u d i n g p r o v i d i n g a n e f f e c t i v e r e m e d y b e f o r e a n a t i o n a l a u t h o r i t y f o r v i o l a t i o n o f t h o s e r i g h t s a n d f r e e d o m s , a n d w h e r e r e l e v a n t t h e i r o b l i g a t i o n s a r i s i n g f r o m t h e E u r o p e a n S o c i a l C h a r t e r (E T S N o. 3 5) (h e r e a f t e r " t h e E u r o p e a n S o c i a l C h a r t e r ") (r e v i s e d) (E T S N o. 1 6 3) (h e r e a f t e r " t h e E u r o p e a n a n d i n t e r n a t i o n a l h u m a n r i g h t s i n s t r u m e n t s ") ;

[3.] Reaffirming that all human rights are universal, indivisible, interdependent and interrelated and should be enjoyed by everyone without discrimination;

[4.] R e c a l l i n g R e s o l u t i o n 4 8 / C l e a f , h e a l t h y a n d s u s t a i n a b l e e n v i r o n m e n t a d o p t e d b y t h e U n i t e d N a t i o n s H u m a n R i g h t s C o u n c i l o n 8 O c t o b e r 2 0 2 1 ;

[5.] Aware that loss of biodiversity, depletion of natural resources and chemical pollution bring serious challenges for societyⁱ, that climate change is one of the most pressing and serious threats to present and future generationsⁱⁱ, and that warming should be limited to 1.5°C above pre-industrial levelsⁱⁱⁱ;

[or]

Recognizing that measures to anticipate, prevent or minimize the loss of biodiversity, depletion of natural resources, chemical pollution and the causes of climate change, including reducing greenhouse gas emissions, and their impact, contribute to the better enjoyment of human rights;^{iv}

[6.] Acknowledging the growing threats to the environment and the urgent need to act in an ambitious and concerted manner at the global and regional level to better ensure its sustainability and protection;^v

[7.] B e a r i n g i n m i n d t h a t l i f e a n d w e l l - b e i n g o n o u r p l a n e t i s c o n t i n g e n t o n t h e e a r t h ' s c a p a c i t y t o g u a r a n t e e b o t h h u m a n r i g h t s a n d a h e a l t h y e n v i r o n m e n t t o f u t u r e g e n e r a t i o n s a n d m i n d f u l o f t a k i n g i n t e r g e n e r a t i o n a l e q u i t y i n t o a c c o u n t i n S t a t e a c t i o n s ;^{vi}

[8.] R e c a l l i n g U n i t e d N a t i o n s G e n e r a l A s s e m b l y R e s o l u t i o n 7 0 / 1 o f 2 5 S e p t e m b e r 2 0 1 5 , e n t i t l e d " T r a n s f o r m i n g t h e 2 0 3 0 A g e n d a f o r S u s t a i n a b l e D e v e l o p m e n t " , i n w h i c h t h e A s s e m b l y a d o p t e d t h e S u s t a i n a b l e D e v e l o p m e n t G o a l s w h i c h a r e i n t e g r a t e d a n d i n d i v i s i b l e a n d b a l a n c e t h e t h r e e d i m e n s i o n s o f s u s t a i n a b l e d e v e l o p m e n t : t h e e c o n o m i c , s o c i a l a n d e n v i r o n m e n t a l ;^{vii}

[9.] R e c a l l i n g t h e w o r k o f t h e U n i t e d N a t i o n s S p e c i a l R a p p o r t e u r o n H u m a n R i g h t s a n d t h e E n v i r o n m e n t , i n p a r t i c u l a r t h e *Framework Principles on Human Rights and the Environment* (2018) and the collected good practices in the implementation of the human right to a safe, clean, healthy and sustainable environment (2019);

[10.] U n d e r l i n i n g t h e C o u n c i l o f E u r o p e ' s c o m m i t t e d n e n t t o t h e e l a b o r a t i o n o f t h e 1 9 7 9 C o n v e n t i o n o n t h e C o n s e r v a t i o n o f E u r o p e a n W i l d l i f e a n d N a t u r a l H a b i t a t s (B e r n C o n v e n t i o n , E T S N o. 1 0 4) , t h e 1 9 9 3 C o n v e n t i o n o n C i v i l L i a b i l i t y f o r D a m a g e R e s u l t i n g f r o m A c t i v i t i e s D a n g e r o u s t o t h e E n v i r o n m e n t (E T S N o. 1 5 0) a n d t h e 1 9 9 8 C o n v e n t i o n o n t h e P r o t e c t i o n o f t h e E n v i r o n m e n t t h r o u g h C r i m i n a l L a w (E T S N o. 1 7 2) ;^{viii}

[11.] N o t i n g t h e i n c r e a s e d r e c o g n i t i o n o f s o m e f o r m o f t h e r i g h t t o a h e a l t h y e n v i r o n m e n t i n , i n t e r a l i a , i n t e r n a t i o n a l i n s t r u m e n t s a n d n a t i o n a l c o n s t i t u t i o n s , l e g i s l a t i o n a n d p o l i c i e s a n d v a r i o u s r e g i o n a l h u m a n r i g h t s i n s t r u m e n t s ;^{ix}

[12.] R e c a l l i n g P a r l i a m e n t a r y A s s e m b l y R e c o m m e n d a t i o n s 1 4 3 1 (1 9 9 9) o n f u t u r e a c t i o n t o b e t a k e n b y t h e C o u n c i l o f E u r o p e i n t h e f i e l d o f e n v i r o n m e n t p r o t e c t i o n , 1 6 1 4 (2 0 0 3) o n t h e e n v i r o n m e n t a n d h u m a n r i g h t s , 1 8 8 5 (2 0 0 9) o n d r a f t i n g a n a d d i t i o n a l p r o t o c o l t o t h e E u r o p e a n C o n v e n t i o n o n

Human Rights concerning the right to a healthy environment: need for enhanced action by the Council of Europe” , Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe , proposes to draw up an additional protocol to the European Convention on Human Rights (ETS No. 5) on the right to a safe, clean, healthy and sustainable environment, to draw up an additional protocol to the European Social Charter (ETS Nos. 35 and 163) on the right to a safe, clean, healthy and sustainable environment, to prepare a feasibility study for a “ 5 P” convention threatening human health, dignity and life, and to revise Committee of Ministers Recommendation CM/Rec(2016)3 on Human Rights and Business;

[13.] 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 considering obligations on human rights in such situations;^x

[14.] Conscious of the need for States to respect the rights and knowledge of indigenous peoples and local communities, in accordance with the United Nations Declaration of the Rights of Indigenous Peoples and international human rights law;^{xi}

[15.] 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 implies heightened obligations on States to protect children from foreseeable harm;^{xii}

[16.] Emphasizing the vital role of women in environmental and sustainable development matters and, in this respect, the need to promote gender equality and the empowerment of women;^{xiii}

[17.] 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 the development of respect for human rights and the environment;^{xiv}

[18.] Underscoring the positive, important and legitimate roles of all human rights defenders, including environmental human rights defenders, in promoting the realisation of all 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;^{xv}

[19.] Recognising the vital role of non-State actors, including civil society, indigenous peoples and local communities, as well as cities, regions and other subnational authorities in the protection of the environment;^{xvi}

[20.] Recalling the United Nations Guiding Principles on Business and Human Rights, which underscore the responsibility of all business enterprises to respect human rights;

[21.] Recalling the High-level Conference on Environmental Protection and Human Rights (27 February 2020, Strasbourg) and the Final Declaration by the Georgian Presidency of the Committee of Ministers which acknowledged that climate change, extinction of species, loss of biodiversity, pollution and the overall degradation of the environment threaten the enjoyment of the right to a healthy environment;

of human rights and require the widest possible cooperation by all Council of Europe member States, and that the Council of Europe has a key role to play in mainstreaming the environmental dimension into human rights and pursuing a rights-based approach to environmental protection; ^{xvii}

[22.] Taking note of the High Level International Conference on Human Rights and Environmental Protection “ Human Rights for the environment” organised by the Ministry of October 2021, Foreign Affairs of Georgia and hosted by the European Court of Human Rights, which underlined that a clean environment is a precondition to the enjoyment of human rights: the full enjoyment of human rights to life, health, quality private and family life or home, depends on healthy ecosystems and their benefits to people;^{xviii}

[23.] Reaffirming that the Convention and the Charter are living instruments which must be interpreted in the light of present-day conditions; ^{xix}

[24.] Affirming that this 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, and supports the raising of awareness of the interdependence and mutual reinforcement of the norms of human rights and environmental protection; ^{xx}

[25.] Taking note in this regard 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 on Social Rights, published by the Council of Europe in 2006 and subsequently updated in 2012 and 2021, which shows that the Convention and the Charter already offers a considerable degree of protection in relation to environmental issues although they do not expressly recognised a right to the protection of the environment;^{xxi}

[26.] Convinced that people have the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and that everyone is entitled to an environment in which those rights and freedoms can be fully realized; ^{xxii}

[27.] [Conscious that the primary responsibility for protecting the environment and human rights rests with member States.^{xxiii}]

[OPERATIVE PART]

Recommends that the governments of the member States:

1. [Recognize the right to a clean, healthy and sustainable environment as a human right that is derived from and inherent in existing international human rights instruments and is important for the enjoyment of human rights;^{xxiv}]
2. examine their national legislation and practice and consider reviewing them if they are not consistent with the recommendations, principles and further guidance set out in the appendix;^{xxv}
3. ensure, by appropriate means and action, a wide dissemination of this recommendation among competent authorities and stakeholders;^{xxvi}
4. share examples of good practices related to the implementation of this recommendation, including through workshops and other events;^{xxvii}
5. for States Parties to the European Social Charter, consider signing and ratifying the 1995 Additional Protocol to the European Social Charter providing for a System of Collective Complaints (ETS No. 158) and consider recognising the right of national non-governmental organisations (NGOs) fulfilling the criteria mentioned therein to lodge collective complaints before the European Committee of Social Rights;^{xxviii}
6. consider signing and/or ratifying, and fully implementing, the Convention of the Council of Europe on Access to Official Documents (CETS No. 205);^{xxix}
7. consider signing and/or ratifying, and fully implementing, the United Nations Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and the protocol thereto;^{xxx}
8. examine, within the Committee of Ministers, the implementation of this recommendation no later than five years after its adoption.^{xxxi}

[APPENDIX]*[General principles]*

1. In the implementation of the present recommendation, member States should ensure the respect of general principles arising from international law principle^{xxxii}, the principles of prevention^{xxxiii} and precaution^{xxxiv}, the “polluter and takers” principle^{xxxv} into account the need for intergenerational equity^{xxxvi}.
2. Where decisions of public authorities restrict a the right to respect for private and family life, the right to property, the right to receive and impart information and ideas, the right to freedom of peaceful assembly and the right to freedom of association, including with respect to environmental matters, member States should ensure that those decisions are prescribed by law, pursue a legitimate aim and are necessary in a democratic society, striking a balance between the interest of the individual and the general interest, as set out in the European Convention on Human Rights (hereinafter referred to as the Convention) and in a wide margin of appreciation in how this balance should be struck.^{xxxvii}
3. Where measures taken by member States to preserve the environment lead to an interference with individual rights and freedoms, member States should ensure that the measures are prescribed by law, pursue a legitimate aim and are necessary in a democratic society.
4. Member States should ensure the enjoyment of the rights and freedoms set forth in the Convention and, when applicable, the European Social Charter and the revised European Social Charter (hereinafter, including in relation to the environment, without discrimination on any ground.^{xxxviii}
5. Member States should ensure access without discrimination, *inter alia*, to information and justice in environmental matters, as well as to participation in decision-making, to environmental education and to environmental benefits.^{xxxix}
6. 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.^{xl}
7. 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 and mainstream this dimension into the planning, developing, implementing and monitoring of their environmental legislation, strategies, policies and actions.
8. Taking into consideration their vital role in the protection of the environment, member States should consult and cooperate in the implementation of this recommendation with non-State actors and subnational entities, including civil society, economic actors, indigenous peoples and local communities, cities and regions.^{xli}
9. Member States should ensure that the mandate given to National Human Rights Institutions (NHRIs) to protect and promote human rights is as broad as possible and covers linkages between human rights and the environment and that that NHRIs can operate independently, in an effective manner and in a climate of impartiality, integrity, transparency and fairness.^{xlii}

[Environmental harm and the right to life]

10. Member States should take appropriate steps to protect the right to life, including from threats posed by environmental harm caused by other private actors or activities that are not directly connected with the State.^{xliii} In particular:

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, e.g., by making regulations which take into account the special features of a situation or an activity and the level of potential risk to life; placing p
concerning such activities, and; providing for appropriate procedures for identifying shortcomings in the technical processes concerned and errors committed by those responsible.^{xliv}

b. Where loss of life may be the result of 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.^{xlv}

[Environmental harm and the right to respect for private and family life and the home]

11. Member States should ensure that environmental harm, stemming from State or non-state activities, does not have a directly harmful effect on, or seriously risks the enjoyment of, private and family life or home.^{xlvi}

[Environmental harm and the protection of property]

12. Member States should ensure that environmental harm stemming from their activities does not affect the exercise of the right to property.^{xlvii}

[Right to receive and impart information and ideas on environmental matters]

13. Bearing in mind that 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,^{xlviii} member States should take appropriate measures to ensure[, in accordance with Article 10 of the Convention,] that the right to freedom of expression can be effectively enjoyed, with particular regard to environmental human rights defenders.^{xlix}

[Right to assemble and associate to collectively act in the interest of environmental matters]

14. Member States should take appropriate measures to ensure[, in accordance with Article 11 of the Convention,] that the right to freedom of assembly and association can be effectively enjoyed.ⁱ 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 rightⁱⁱ and includes the unobstructed peaceful assembly and association related to environmental matters.ⁱⁱⁱ

[Access to information on environmental matters]

15. As part of the appropriate steps to safeguard the right to life and the right to respect for private and family life, member States should ensure a right of access to information in relation to environmental issues by adequately informing the public, in an understandable way, about any life threatening emergencies, including natural disasters, as such that people can make informed decisions on the risks posed to themselves and their relatives.^{liii}

16. Member States should ensure that public authorities possess and update environmental information which is relevant to their functions and ensure that environmental information available to

the public is transparent and effectively accessible through public telecommunications networks. Additionally, member States should take measures to disseminate environmental legislation, policy documents and proposals, 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.^{liv}

17. When public authorities engage in dangerous activities which they 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.^{lv}

18. Member States should guarantee the right of everyone, without distinction on any ground, to have access, on request, to official documents concerning environmental information held by public authorities. They should ensure that public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, without the need to show a legal or other interest.^{lvi}

[Decision-making on environmental matters and public participation in them]

19. When making decisions which have the potential of affecting the environment, member States should take into account the interests of individuals who may be affected and should allow the public to make representations in relation to such decisions, within the framework of the national legislation.^{lvii}

20. Member States should ensure that every member of society has adequate opportunities to effectively participate in decision-making processes related to environmental matters, and ensure that the results of the public participation is taken into account in the decision. This includes, *inter alia*, public participation in decisions on specific activities, public participation concerning plans, programmes and policies relating to the environment and, where appropriate, participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments.^{lviii}

21. Member States should introduce appropriate procedures requiring environmental assessment of its proposed activities that are likely to have significant adverse effects on the environment with a view to avoiding, preventing or reducing and, if possible, offsetting such effects. With a view to promoting sustainable development and ensuring a high level of environmental protection, Member States should, through strategic environmental assessment (SEA) integrate environmental considerations into the preparation and adoption of plans and programmes which are likely to have significant effects on the environment.^{lix}

22. Member States should ensure that where public authorities have to determine complex issues of environmental and economic policy, the decision-making process should involve appropriate investigations and studies in order to predict and evaluate in advance the effects on the environment and to enable them to strike a fair balance between the various conflicting interests at stake. Member States should ensure public access to the conclusions of such studies and to information which would allow the public to assess the danger to which they are exposed.^{lx}

23. Member States are encouraged, as far as possible, to enable civil society organisations promoting environmental protection and meeting any requirements under national law, to participate in the decision-making process.^{lxi} They are encouraged to 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.^{lxii}

[Participation and inclusion of youth in environmental matters]

24. Member States should adopt policies or measures designed to promote youth participation related to environmental matters, including the participation of young people belonging to vulnerable and minority groups. They should consider that environmental problems are of primary concern to the young people who will be obliged in the future to cope with the consequences of past mistakes, 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.^{lxiii}

[Participation of women in environmental matters]

25. Member States should take all appropriate measures to ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels.^{lxiv}

[Environmental risks and access to court]

26. Member States should be mindful that the right to a fair trial includes the right to access to a court. They should enable applicants to appeal to a court if they consider that their rights and interests have not been given sufficient weight in the decision-making processes on complex questions of environmental and economic policy.^{lxv}

27. Member States should ensure [in accordance with eventual applicable criteria laid down in national law] 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.^{lxvi}

28. In administrative proceedings concerning authorisations of installations and plants, member States are invited to consider broadening the *locus standi* before national courts and tribunals with respect to human rights related to the environment, granting any group, foundation or association which, according to its statutes, aims at the protection of the environment, the right to participate in proceedings.^{lxvii}

29. Member States should ensure that persons who have an arguable claim that their rights and freedoms as set forth in the Convention have been violated due to environmental harm, have access to an effective remedy before a national authority,^{lxviii} and should ensure that the competent authorities shall enforce such remedies when granted. In order to ensure that this access to justice and remedies is provided on an equal footing, member States are encouraged to establish appropriate legal aid schemes.^{lxix}

[Restorative sanctions]

30. Member States are encouraged to consider including restorative sanctions 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.^{lxx}

[Environmental pollution and the right to just conditions]

31. Particularly in dangerous industries, such as mining, where health and safety risks, including exposure to environmental pollution, cannot be eliminated, member States should take preventive and protective measures.^{lxxi}

[Environmental pollution and the right to safe and healthy working conditions]

32. Member States should adopt, enforce and effectively monitor legislation on safety and security at the workplace to ensure that workers' ~~r~~ ^{large} ~~mdt~~ are affected by environmental pollution. 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 accidents. ^{lxxii}

[Right to a healthy environment]

33. Member States should ensure that the measures they take as part of the right to protection of health include the prevention and removal of the causes of ill-health resulting from environmental threats. ^{lxxiii}

34. When there are reasonable grounds for concern regarding the potentially dangerous effects of environmental pollution on human health, member States should take precautionary measures. The lack of full scientific certainty should not be used as a reason for postponing appropriate measures. ^{lxxiv}

35. In light of the right to a healthy environment, member States are encouraged to develop and regularly update sufficiently comprehensive environmental legislation and regulations; take specific steps, such as modifying equipment, measuring air quality properly, introducing threshold values for emissions and environmental objectives for air quality, in order to protect citizens' health, prevent air pollution and reduce it on a local and global scale; prevent exposure to tobacco smoke, ensure that environmental standards and rules are properly applied, through appropriate supervisory mechanisms; inform and educate the public, including pupils and students at school, about both general and local environmental problems; assess health risks through epidemiological monitoring of the groups concerned; take preventive and protective measures to ensure access to safe drinking water and sanitation; take measures to guarantee food safety; prevent soil contamination; adopt regulations and legal rules on the prevention and reduction of noise pollution; adopt regulations regarding for the prevention of waste and for the proper management of waste according to hierarchy principle, adopt proper measures to prevent illegal shipment of waste, especially hazardous waste, protect their population against the consequences of nuclear accidents taking place abroad and having an effect within their territory; prevent related hazards for communities living in an area of risk due to nuclear power plants, and; ban the use, production and sale of asbestos and products containing it and take measures to manage correctly their wastes. ^{lxxv}

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

[Right to housing and the environment]

37. In light of non-discrimination, member States should take measures to prevent segregation on any ground of discrimination in environmentally hazardous areas, assist in improving living conditions and the environment, and ensure that housing is located in ecologically healthy surroundings. ^{lxxvi}

[Environmental education]

38. Member States should include environmental education, as a part of education promoting sustainable development (ESD), in the curricula of all levels of education and training from early childhood to tertiary and adult education, including technical and vocational education and training (TVET) as a key to, inter alia, increase the understanding of the close relationship between humans and

nature, develop respect for the natural environment, understand the need to conserve species of wild flora and fauna and their habitats, promote the importance of and the measures required for the conservation and sustainable use of biological diversity, understand the causes and effects of climate change and desertification, strengthen capacity to respond to environmental challenges and attain fundamentally new systems of human-environmental interactions.^{lxxvii}

[Public awareness on environmental matters]

39. 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, of the different forms of environmental challenges, its causes and effects (e.g., on health and well-being), of how to prevent and respond to them at individual, structural and political level (e.g., through conservation, sustainable use, risk preparedness), and of the harm they generate for individuals and society. States should build the capacity of the public to understand environmental challenges and policies, so that they may fully exercise their rights to express their views on environmental issues, understand environmental information, including assessments of environmental impacts, participate in decision-making and, where appropriate, seek remedies for violations of their rights.^{lxxviii}

[Business enterprises]

40. Member States are encouraged to adequately regulate the private industry by applying a smart mix of measures – national and international, mandatory and voluntary - to ensure compliance with its human rights responsibility related to the environment.^{lxxix} Member States should also incorporate the environmental dimension into their national action plans on human rights and business.^{lxxx}

41. Member States should apply such measures as may be necessary to encourage or, where appropriate, require that business enterprises apply environmental and human rights due diligence throughout their operations and activities, in order for those businesses to avoid causing or contributing to adverse human rights impacts through environmental harm, to address such impacts when they occur and to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships.^{lxxxi}

42. Member States should, as part of providing protection against business-related human rights abuse resulting from environmental harm, take appropriate steps to ensure that when such abuses occur those affected have access to effective judicial and non-judicial remedies.^{lxxxii}

[Environmental human rights defenders]

43. Member States should respect the right of everyone to promote and protect peacefully a clean, healthy and sustainable environment, necessary for the enjoyment of a vast range of human rights. 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 national institutions for the protection and promotion of human rights (NHRIs) to freely carry out activities, on a legal basis, consistent with international law and standards, to strive for the protection and promotion of all human rights and fundamental freedoms. Member States should additionally take measures to protect environmental human rights defenders from violations committed by both State and non-State actors.^{lxxxiii}

[Rights of indigenous peoples and their environment]

44. Member States should ensure the rights of indigenous peoples and local communities, particularly by recognizing 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, in accordance with the UN Declaration on indigenous peoples and other relevant international instruments. ^{lxxxiv}

45. 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 utilization of such knowledge, innovations and practices. ^{lxxxv}

[Rights of children]

46. Member States should take special safeguards, including appropriate legal protection, to protect children from foreseeable environmental harm. ^{lxxxvi}

[Data collection]

47. Member States should pay particular attention to the effect of environmental degradation on people in vulnerable situations^{lxxxvii} by collecting disaggregated data and intensifying scientific research on the specific effects of environmental harm on different segments of the population. ^{lxxxviii}

[Development of national environmental policies and actions]

48. Member States should consider encouraging public authorities to adopt a strategic approach towards the human rights challenges due to the degradation of the environment by integrating the relevant issues into related action plans. ^{lxxxix}

49. Member States should mainstream human rights into planning, developing, implementing and monitoring of their environmental legislation, strategies, policies and actions.

50. In developing their legislations, policies, strategies and actions, member States could build upon the existing legal instruments, principles and activities of the Council of Europe.^{xc}

51. Member States should explore all possible partnerships with a view to mainstreaming the environmental dimension in the domestic activities for the promotion and protection of human rights.^{xcⁱ}

52. 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 respectful of the environment, including innovative technologies.^{xcⁱⁱ}

53. Member States should consider the impact of the measures taken, for instance by developing, where appropriate, human rights indicators to measure their impact in the context of the environment.^{xcⁱⁱⁱ}

[Dialogue among member States related to environmental matters]

54. Member States should develop effective dialogue so that they have 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 value.^{xciiv}

ⁱ High Level International Conference on Human Rights and Environment, 2020, Strasbourg):

'Climate change, **loss of biodiversity, depletion of natural resources and chemical pollution bring new challenges for society**, Governments and the European Court of Human Rights. How will the Court take account of these issues when interpreting the ECHR in future cases relating to the environment?' ' ' .

ii UN Human Right Council, Resolution 48/13 on "The human right to a safe, clean, healthy and sustainable environment", adopted on 8 October 2021, preamble:

"Recognizing that 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 human rights, including the right to life,"

iii Paris Agreement adopted on 12 December 2015 at the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change held in Paris from 30 November to 13 December 2015:

Article 2

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

(a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to **limit the temperature increase to 1.5°C above pre-industrial levels**, recognizing that this would significantly reduce the risks and impacts of climate change;"

iv Shortened from PP7 of HRC resolution on the Mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change (<https://undocs.org/a/hrc/48/l.27>) and added the mention of biodiversity/natural resources/chemical pollution.

v Chairmanship of the Committee of Ministers, *Joint Declaration on human rights and the environment by the outgoing and incoming Presidencies of the Committee of Ministers, Decl(15/05/2020)*, 15 May 2020:

“ The outgoing (Georgia) and incoming (Greece and Germany) presidents of the Council of Europe,

Acknowledging the growing threats to the climate and the environment and the urgent need to act in an ambitious and concerted manner at the global level to better ensure their sustainability and protection; ”

vi Chairmanship of the Committee of Ministers, *Joint Declaration on human rights and the environment by the outgoing and incoming Presidencies of the Committee of Ministers, Decl(15/05/2020)*:

' **Bearing in mind that life and well-being on our planet is contingent on human rights, we guarantee both human rights and a healthy environment to future generations:** ' ' ,

Les Club des Juristes, *Draft of the European Declaration on Global Principles*, 24 June 2017) ,

' **Mindful of conducting actions guided by intragenerational and intergenerational equity,** ' ' ,

vii UN General Assembly, resolution A/70/L.1 of 25 September 2015 "The Sustainable Development Goals", 3rd recital

viii Chairmanship of the Committee of Ministers, *Joint Declaration on human rights and the environment by the outgoing and incoming Presidencies of the Committee of Ministers, Decl(15/05/2020)*.

ix *Tăta Romania* (Judgment) (27 January 2009), ECHR Application no. 67021/01 in French only), para. 112; *Di Sarno and others v. Italy* (Judgment) (10 January 2012), ECHR Application no. 30765/08, para. 110;

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 the draft of the principles on Human Rights and Environment (January 2018) UN Doc. A/HRC/37/59, p. 7:

‘ ‘ 1. Human rights, the environment, and our human rights are intertwined with the environment in which we live. Environmental harm interferes with the enjoyment of human rights, and **the exercise of human rights helps to protect the environment and to promote sustainable development.** ’ ’ ,

General environmental protection is mentioned in the Constitutions of Albania, Andorra, Croatia, Estonia, Germany, Greece, Lithuania, Luxembourg, Netherlands, Poland, Portugal, San Marino, Sweden and Switzerland, whereas the explicit individual right to a healthy environment is additionally recognised by the Constitutions of Armenia, Azerbaijan, Belgium, Bulgaria, Czech Republic, Finland, France, Georgia, Hungary, Latvia, Montenegro, North Macedonia, Norway, Republic of Moldova, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Turkey and Ukraine.

x *Recommendation CM/Rec(2019)6 of the Committee of Ministers to member States on the development of the Ombudsman institution (Adopted by the Committee of Ministers on 16 October 2019 at the 1357th meeting of the Ministers' Deputies)*:

' **Expressing grave concern about the challenging working conditions, threats, pressures and attacks which Ombudsman institutions and their staff are at times exposed to,** 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 'F' (January 2018) UN Doc. A/HRC/37/59:

‘ ‘ Framework principle 14

States should take additional 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 . ”

Commentary

40. As the Human Rights Council has recognized, while the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by those segments of the population that are already in **vulnerable situations**. Persons may be vulnerable because they are unusually susceptible to certain types of environmental harm, or because they are denied their human rights, or both. Vulnerability to environmental harm reflects the “**threat to human well-being and the capacity of people and communities to cope with those threats**”.

41. Those who are at greater risk from environmental harm for either or both reasons often include women, children, persons living in poverty, members of indigenous peoples and traditional communities, older persons, persons with disabilities, ethnic, racial or other minorities and displaced persons.²⁶ The many examples of potential vulnerability include the following:

[...]

Le Club des Juristes, Draft Project ‘ ‘ Global Pact for the Environment ’ ’ (Paris , 24 June 2017), ‘ **Conscious of the need to respect, promote and consider their respective obligations on human rights, the right to health, the rights and knowledge of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situation, under their jurisdiction,** ’ ’

^{xi} Le Club des Juristes, Draft Project ‘ ‘ Global Pact for the Environment ’ ’ (Paris , 24 June 2017), ‘ **Conscious of the need to respect, promote and consider their respective obligations on human rights, the right to health, the rights and knowledge of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situation, under their jurisdiction,** ’ ’

^{xii} *Convention on the Rights of the Child* (20 November 1989), 1577 UNTS 3, Art. 24; 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

9.13 [...] The Committee consider **particularly impacted** by the effects of climate change, **both in terms of the manner in which they experience such effects as well as the potential of climate change to affect them throughout their lifetime**, in particular if immediate action is not taken. Due to the particular impact on children, and the recognition by States parties to the Convention that children are entitled to **special safeguards, including appropriate legal protection**, states have heightened obligations to protect children from foreseeable harm.³⁰

³⁰ Preamble; A/HRC/31/52, para. 81, CRC Report of the 2016 day of general discussion ‘ Rights and

^{xiii} UN General Assembly, resolution A/70/L.1 of 25 September 2015 “ **Development** ”, 3rd recital;

Le Club des Juristes, Draft Project ‘ ‘ Global Pact for the Environment ’ ’ (Paris , 24 June 2017), ‘ **Emphasizing the vital role of women in sustainable development matters and the need to promote gender equality and the empowerment of women,** ’ ’

^{xiv} Le Club des Juristes, Draft Project ‘ ‘ Global Pact for the Environment ’ ’ (Paris , 24 June 2017), ‘ **Stressing the fundamental importance of science and education for sustainable development** ’ ’

Convention on Biological Diversity (5 June 1992), 1760 UNTS 69, Art. 13.

UN Human Rights Council, Report of the Special Rapporteur on the issue of human rights and the environment, A/HRC/37/59, p. 10: “ **A safe, clean, healthy and just environment is a human right** ”

‘ ‘ Framework principle 6

States should provide for **education and public awareness on environmental matters.**

Commentary

15. States have agreed that the education of the child shall be directed to, among other things, **the development of respect for human rights and the natural environment**. Environmental education should begin early and continue throughout the educational process. It should increase students’ awareness of environmental issues and nature, help them to appreciate and enjoy the natural world and strengthen their capacity to respond to **environmental challenges**.

16. Increasing the public awareness of environmental matters should continue into adulthood. To ensure that adults as well as children **understand environmental effects on their health and well-being**, States should make the public aware of the specific environmental risks that affect them and how they may protect themselves from those risks. As part of increasing public awareness, States should **build the capacity of the public to understand environmental challenges and policies**, so that they may fully exercise their rights to express their views on environmental issues (framework principle 5), understand environmental information, including assessments of environmental impacts (framework principles 7 and 8), participate in decision-making (framework principle 9) and, where appropriate, seek remedies for violations of their rights (framework principle 10). States should tailor environmental education and public awareness programmes to the culture, language and environment

^{xv} UN Human Rights Council, Resolution on recognizing the contribution of **environmental human rights defenders** to the enjoyment of human rights, environmental protection and sustainable development adopted in May 2019, A/HRC/40/L.22/Rev.1; Council of Europe Commissioner for Human Rights, Human Rights Comment, Let us make Europe a safe place for environmental human rights defenders, 25/05/2021

Environmental human rights defenders

The people behind these extremely important efforts are environmental human rights defenders. The term refers to human rights defenders working on environmental issues.

Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe (Adopted by the Committee of Ministers on 28 November 2018 at the 1330th meeting of the Ministers’ Deputies):

Underscoring the positive, important and legitimate roles of all human rights defenders, including NHRIs and civil society organisations, in independently promoting the realisation of all human rights including by engaging with Governments, across local, regional, national and international levels, organising awareness raising and education activities, and contributing to the efforts to implement the obligations and commitments under the European Convention on Human Rights. *Steel and Morris v. the United Kingdom* (Judgment) (15 February 2005), ECHR Application no. 68416/01, para. 89: 'The Government have pointed out that the high level of protection afforded to the press under Article 10. The Court considers, however, that in a democratic society even small and informal campaign groups, such as London Greenpeace, must be able to carry on their activities effectively and that there exists a strong public interest in enabling such groups and individuals outside the mainstream to **contribute to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment** (see, *mutatis mutandis*, *Bowman v. the United Kingdom*, judgment of 19 February 1998, Reports 1998-I, and *Appleby and Others v. the United Kingdom*, no. 44306/98, ECHR 2003-VI) . . .'

xvi *Le Club des Juristes, Draft Project 'Global Pact for the Environment Welcoming the vital role of non State actors, including civil society, economic actors, cities, regions and other subnational authorities in the protection of the environment.'*

xvii 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):

Climate change, extinction of species, loss of biodiversity, pollution and the overall degradation of the earth's ecosystems have a profound global impact on the enjoyment of human rights and require the widest possible cooperation by all Council of Europe Member States.
The protection of the environment and the protection of human rights are interconnected: one cannot be achieved without the other, nor at the expense of the other. Life and well-being on our planet is contingent on humanity's collective capacity to guarantee both human rights and the Council of Europe has a key role to play in mainstreaming the environmental dimension into human rights and pursue a rights-based approach to environmental protection.

xviii High Level International Conference on Human Rights and the Environment (Strasbourg, 27 February 2020, Strasbourg):

Clean environment is a precondition to the enjoyment of human rights: to life, health, quality private and family life or home, depends on healthy ecosystems and their benefits to people. [...]

xix *Tyler v. The United Kingdom* (Judgment) (25 April 1978), ECHR Application no. 5856/72, para. 31; *Fredin v. Sweden (No. 1)* (Judgment) (18 February 1991), ECHR Application no. 12033/86, para. 48; *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits), ECSR Complaint No. 30/2005, para. 194; *ATTAC ry, Globaali sosiaalityö ry and Maan ystävä ry v. Finland* (Decision on Admissibility and on Immediate Measures) (22 January 2019), ECSR Complaint No. 163/2018, para. 12.

xx *CDDH Report 92nd meeting Strasbourg* (26–29 November 2019), CDDH(2019)R92, Appendix IV, Terms of reference of the CDDH, DH-SYSC and DH-BIO for 2020 – 2021 (as adopted by the Committee of Ministers at its 1361st meeting, 19-21 November 2019), Specific tasks, (v), p. 42:

On the basis of developments in the member States, within the Office of the High Commissioner for Human Rights, 'Guiding Principles on Human Rights and the Environment and, if appropriate, develop a draft non-binding instrument of the Committee of Ministers (e.g. recommendation, guidelines) recalling existing standards in this field.'
These Guiding Principles should be understood as a coherent set of terms of their objective of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalisation.'

xxi Chairmanship of the Committee of Ministers, *Joint Declaration on human rights and the environment by the outgoing and incoming Presidencies of the Committee of Ministers, Decl(15/05/2020).*

xxii *Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration)* (16 June 1972), Principle 1:

Man the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being [...]'

Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR), Art. 28:

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

UN Economic and Social Council, 'Human Rights and the Environment' Rapporteur' (6 July 1994/1994/9, para. 184: Doc. E/CN.

International human rights instruments contain few specific provisions that recognize that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". It is generally accepted that the "order" to which the Declaration refers also covers the environmental concerns of this day and age.'

xxiii 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):

Development of National Policies and Act

The primary responsibility for protecting the environment and human rights rests with Member States. ' '

xxiv UN Human Rights Council, ' Report of the Special Rapporteur on the issue of human rights and the environment, *Human Rights and the Environment: A Framework of Principles on Human Rights and the Environment* (24 January 2018) UN Doc. A/HRC/37/59:

"16. Even without formal recognition, the term "the right to a safe, clean, healthy and sustainable environment" refers to the environmental aspects of the entire range of human rights that depend on a safe, clean, healthy and sustainable environment. The use of the term in this way — and, for that matter, the adoption of a resolution recognizing the right — does not change the legal content of obligations that are based on existing human rights law.[...]"

xxv Similar wording in *Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business*:

"Recommends that the governments of the member States:

1. review **their national legislation and practice** to ensure that they comply with **the recommendations, principles and further guidance set out in the appendix**, and evaluate the effectiveness of the measures taken at regular intervals;"

xxvi Similar wording in *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 1167th meeting of the Ministers of Education, Culture and Sports)*:

"Recommends that the governments of the member States:

[...]

2. **ensure, by appropriate means and action, a wide dissemination of this recommendation among competent authorities and stakeholders**, with a view to raising awareness of the corporate responsibility to respect human rights and contribute to their realisation;"

xxvii Similar wording in *Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business*:

"3. **share examples of good practices related to the implementation of this recommendation** with a view to their inclusion in a shared information system, to be established and maintained by the Council of Europe, and which is to be accessible to the public, **including through** reference to existing information systems;"

xxviii Similar wording in *Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe*, Appendix, para. I:

"Member States should:

[...]

k. **consider signing and ratifying the 1995 Additional Protocol to the European Social Charter providing for a System of Collective Complaints (ETS No. 158) and to consider recognising the right of national NGOs fulfilling the criteria mentioned therein to lodge collective complaints before the European Committee of Social Rights.** "

xxix 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):

"States which have not yet done so should **consider signing and ratifying**, inter alia, the 1998 *Aarhus Convention of the United Nations on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* and the 2010 Tromsø **Convention of the Council of Europe on Access to Official Documents which guarantee public scrutiny of decision-making on environmental issues.** "

xxx 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)

"States which have not yet done so should **consider signing and ratifying**, inter alia, the 1998 *Aarhus Convention of the United Nations on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* and the 2010 Tromsø **Convention of the Council of Europe on Access to Official Documents which guarantee public scrutiny of decision-making on environmental issues.** "

xxxi Similar wording in *Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business*:

"5. **examine, within the Committee of Ministers, the implementation of this recommendation no later than five years after its adoption**, with the participation of relevant stakeholders

xxxi The principle of *Declaration of the United Nations Conference on the Human Environment*, Stockholm, 5 to 16 June 1972 (Principle 21) has been recalled almost identically in the *Rio Declaration on Environment and Development 1992* (Principle 2) and in the Preamble of the *United Nations Framework Convention on Climate Change (UNFCCC)* (1992), UNTS vol. 1771. The principle has also been included in Arts. 3 of the *Convention on Biological Diversity* (5 June 1992), 1760 UNTS 69 which moreover in Art. 14(1)(c) calls for cooperation:

"Article 3. Principle

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their **jurisdiction or control** do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. "

' Article 14. Impact Assessment and Minimizing Adverse Impacts

[...]

(c) Promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under their **jurisdiction or control** which are likely to significantly affect **adversely** the biological diversity of other States or **areas**

beyond the limits of national jurisdiction, by encouraging the conclusion of **bilateral, regional or multilateral arrangements, as appropriate**;

Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) (1991), UNTS vol. 1989, Art. 2(1):

‘ ‘ Article 2 GENERAL PROVISIONS

1. The Parties shall, either individually or jointly, **take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact** from proposed activities. ’ ’

Convention on long-range transboundary air pollution (1979), UNTS vol. 1302, Art. 1(b), 2:

‘ ‘ Article 1: Definitions

(b) "Long-range **transboundary** air pollution" means air pollution whose physical origin is situated wholly or in part within the area under the national jurisdiction of one State and which has **adverse** effects in the **area** under the jurisdiction of another State at such a distance that it is not generally possible to distinguish the contribution of individual emission sources or groups of sources. ’ ’

‘ ‘ Article 2: Fundamental Principles

The Contracting Parties, taking due account of the facts and problems involved, are determined to protect man and his environment against air pollution and shall endeavour to limit and, as far as possible, gradually **reduce** and **prevent** air pollution including long-range **transboundary** air pollution. ’ ’

Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) (1992, as amended 2003) UNTS. Vol. 1936, Art. 2(1):

‘ ‘ Article 2 GENERAL PROVISIONS

1. The Parties shall **take all appropriate measures to prevent, control and reduce any transboundary impact**. ’ ’

UN Human Rights Council, ‘ Report of the Special Rapporteur on the issue of human rights and the environment, *Annex with a framework for a human rights approach to transboundary environmental problems*, on Human Rights January 2018) UN Doc. A/HRC/37/59, p. 15, para. 36:

‘ Framework principle 13

States should cooperate with each other to establish, maintain and enforce **effective** international legal frameworks in order to **prevent, reduce and remedy transboundary** and global **environmental** harm that interferes with the full **enjoyment of human rights**.

Commentary

36. The obligation of States to cooperate to achieve universal respect for, and observance of, human rights requires States to work together to address **transboundary** and global threats to **human rights**. **Transboundary** and global **environmental** harm can have severe effects on the full **enjoyment of human rights**, and **international cooperation** is necessary to **address** such harm. States have entered into agreements on many international environmental problems, including climate change, ozone depletion, transboundary air pollution, marine pollution, desertification and the conservation of biodiversity. ’ ’

^{xxxiii} Committee of Ministers Rapporteur Group on Education, Culture, Sport, Youth and Environment GR-C(2005)14 (7 March 2005), Contribution of environment and other related sectors to sustainable development (Item for consideration by the GR-C at its meeting on 18 March 2005), para. II(3):

‘ ‘ 3. **principle of prevention**

The principle of prevention must be applied in particular to **dangerous activities** and substances:

- likely to cause pollution, by preventing these at source;
- likely to **pose a threat to health and social cohesion**;
- likely to **deteriorate working conditions**;
- likely to **affect the natural environment, biological diversity and landscapes**;
- likely to affect historic monuments and the cultural heritage;

[...] ’ ’

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Adopted on 22 March 1989), Art. 4(2):

‘ ‘ Article 4 General Obligations

2. Each Party shall **take the appropriate measures to:**

- (a) **Ensure that** the generation of **hazardous** wastes and other wastes within it is **reduced** to a minimum, taking into account social, technological and economic aspects;
- (b) **Ensure** the availability of adequate disposal facilities, for the environmentally sound management of **hazardous** wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal;
- (c) **Ensure that** persons involved in the management of **hazardous** wastes or other wastes within it take such steps as are necessary to prevent pollution due to **hazardous** wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for **human health and the environment**; [...] ’ ’

^{xxxiv} *United Nations Framework Convention on Climate Change (UNFCCC) (1992), UNTS vol. 1771:*

‘ ‘ ARTICLE 3 PRINCIPLES

[...]

3. The Parties **should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures**, taking into account that policies and measures to deal with climate change should be **cost-effective** so as to ensure global benefits at the lowest possible cost. [...] ’ ’

^{xxxv} Le Club des Juristes, *Draft European Convention on Transboundary Pollution*, Art. 8; United Nations, ‘ Report of the United Nations Conference on Environment and Development, *Agenda 21*, UN Doc. A/CONF/151/26/Rev.1 (Vol. I), p. 48, and *Declaration on Environment and Development*, UN Doc. A/CONF/151/26/Rev.1 (Vol. I), p. 13, para. 24. ’ ’

^{xxxvi} Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) (16 June 1972):

- ‘ ‘ Principle 2
The **natural resources** of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded **for the benefit of present and future generations** through careful planning or management, as appropriate. ’ ’
United Nations, ‘ Report of the World Commission on Environment and Development (1987), Annex 1, p. 286; ’
‘ ‘ I-Generational Equity
2. States shall **conserve and use the environment and natural resources for the benefit of present and future generations.** ’ ’
Convention on Biological Diversity (5 June 1992), 1760 UNTS 69, Preamble:
‘ ‘ Deter **conserve and sustainably use** biological diversity **for the benefit of present and future generations.** ’ ’
United Nations Framework Convention on Climate Change (UNFCCC) (1992), UNTS vol. 1771:
‘ ‘ ARTICLES PRINCIPLES PR
[...]
1. The Parties **should protect** the climate system **for the benefit of present and future generations of humankind**, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof. ’ ’
Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) (25 June 1998):
‘ ‘ Article 1 OBJECTIVE
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, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention. ’ ’
UNESCO, *Declaration on the Responsibilities of the Present Generations Towards Future generations* (12 November 1997):
‘ ‘ Art- Protection of the environment
1. In order to ensure that future generations **present generations** from the **should strive for sustainable development and preserve living conditions, particularly the quality and integrity of the environment.** ’ ’
UN General Assembly, ‘ World Charter for Nature ’ (9 November 1982),
‘ ‘ [...] Conscious of the spirit and terms of its resolutions 35
exercise of their permanent sovereignty over their natural resources, to **conduct their activities in recognition of the supreme importance of protection natural systems**, maintaining the balance and quality of nature and conserving natural resources, **in the interest of present and future generations,** [...] ’ ’
xxxviii *European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)* (4 November 1950) ETS No. 5, Art. 14.
European Social Charter (18 October 1961) (ETS No. 35), Preamble.
European Social Charter (revised) (3 May 1996) (ETS No.163), Part V, Art. E.
Similar wording in *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies (Adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Deputies)*,:
‘ ‘ 30. Member States should bear in mind that the prohibition situations are treated differently without an objective and reasonable justification but also when, without such justification, persons whose situations are significantly different are not treated differently. **Member States should take all appropriate measures, including positive action, to ensure full respect for the prohibition of discrimination.** ’ ’
UN Human Rights Council, ‘ Report of the Special Rapporteur on the issue of human rights and the environment, including the right to a safe, clean, healthy and sustainable environment, **Annex with a framework principle 3**, on Human Rights and the Environment ’
‘ Framework principle 3
States should prohibit discrimination and ensure equal and **effective protection against discrimination** in relation to the enjoyment of a safe, clean, healthy and sustainable environment.
Commentary
7. The obligations of States to prohibit discrimination and to ensure equal and effective protection against discrimination apply to the equal enjoyment of human rights relating to a safe, clean, healthy and sustainable environment. States therefore have obligations, among others, **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. ’ ’
xxxix Similar wording in *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies (Adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers’ Deputies)*, p. 16, para. 29:
‘ ‘ **Member States should ensure the promotion of the principle of equality and the right of every person to be free from all forms of discrimination on any ground.** ’ ’
PACE Recommendation 2211 (2021) on “ **Ancoright to a healthy environment: need for enhanced action by the Council of Europe** ”:
“ Article 3: Principle of non-discrimination in environmental non
a. No one shall be discriminated against **on account of his/her belonging to a particular generation.** ”
UN Human Rights Council, ‘ Report of the Special Rapporteur on the issue of human rights and the environment, including the right to a safe, clean, healthy and sustainable environment, **Annex with a framework principle 3**, on Human Rights and the Environment ’ (January 2018) UN Doc. A/HRC/37/59, p. 8, para. 7:
‘ Framework principle 3
States should prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.
Commentary

7. The obligations of States to prohibit discrimination and to ensure equal and effective protection against discrimination apply to the equal enjoyment of human rights relating to a safe, clean, healthy and sustainable environment. States therefore have obligations, among others, 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.’’

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

‘ ‘ 9. Within the scope of the Convention, **the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination** as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.’’

Convention on the Rights of the Child (20 November 1989), 1577 UNTS 3, Arts. 24(2)(e), 29(1)(e):

‘ ‘ Article 24

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

[...]

(e) To ensure that **all segments of society**, in particular parents and children, are informed, have **access to education** and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and **environmental sanitation** and the prevention of accidents;’’

‘ ‘ Article 29.

1. States Parties agree that the **education** of the child shall be directed to:

[...]

(e) The development of respect for the natural **environment**.’’

^{xi} UN Human Rights Council, ‘ Report of the Special Rapporteur on the issue of human rights and the environment, **of a safe, clean, healthy and sustainable environment**’ (24 January 2018) UN Doc. A/HRC/37/59:

‘ ‘ Framework principle 14

States should take additional 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.’’

^{xii} Le Club des Juristes, *Draft Project ‘ ‘ Global Principles for the Protection of the Environment ’ ’* (Paris, 24 June 2017), Art. 14: ‘ Article 14

Role of non-State actors and subnational entities

The Parties shall take the necessary measures to encourage **the implementation of this Pact by non-State actors and subnational entities, including civil society, economic actors, cities and regions taking into account their vital role in the protection of the environment.**’’

^{xiii} Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions (Adopted by the Committee of Ministers on 31 March 2021 at the 1400th meeting of the Ministers’ Deputies), Appendix, paras 3 and 11:

“3 **Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible** and in full compliance with the Paris Principles and that it allows them, inter alia, to: [..]

11. **Member States should ensure that NHRIs can operate independently**, in an environment which is conducive to them carrying out their mandate **in an effective manner and in a climate of impartiality, integrity, transparency and fairness.**”

^{xiii} Council of Europe, updated Manual on Human Rights and the Environment (third edition 2021), Section A, Chapter I, para. (a): ‘ ‘ (a) The right to life is protected under Article 2 of the Convention directly from the actions of the agents of a State, but also lays down **a positive obligation on States to take appropriate steps to safeguard the lives** of those within their jurisdiction. This means that public authorities have a duty **to take steps to guarantee the rights of the Convention even when they are threatened by other (private) persons or activities that are not directly connected with the State.**’’

^{xiv} Council of Europe, updated Manual on Human Rights and the Environment (third edition 2021), Section A, Chapter I, paras. (b), (c), (d):

‘ ‘ (b) The Court has found that the positive obligation on States may apply in the **context of dangerous activities**, such as nuclear tests, the operation of chemical factories with toxic emissions, waste-collection sites or man-made water reservoirs, whether carried out by public authorities themselves or by private companies. In general, the extent of the obligations of public authorities depends on factors such as the harmfulness of the dangerous activities and the foreseeability of the risks to life.

(c) In addition, the Court requires States to discharge their positive obligation to prevent the loss of life also **in cases of natural disasters**, even though they are as such, beyond human control, in contrast to the case of dangerous activities where States are required to hold ready appropriate warning and defence mechanisms.

(d) In the first place, public authorities may be required to take measures to prevent infringements of the right to life as a result of dangerous activities or natural disasters. This entails, above all, the primary duty of a State to put in place **a legislative and administrative framework** which includes:

- **making regulations which take into account the special features of a situation or an activity and the level of potential risk to life.** In the case of dangerous activities this entails regulations that govern the licensing, setting-up, operation, security and supervision of such activities;

- placing particular emphasis on the public's. In cases of natural disasters this includes the maintenance of an adequate defence and warning infrastructure;
- providing for appropriate procedures for identifying shortcomings in the technical processes concerned and errors committed by those responsible."

^{xlv} Council of Europe, updated Manual on Human Rights and the Environment (third edition 2021), Section A, Chapter I, paras. (e), (f), (g):

(e) Secondly, **where loss of life may be the result of an infringement of the right to life**, the relevant public authorities must provide an adequate response, judicial or otherwise. They must ensure that the legislative and administrative framework is properly implemented and that breaches of the right to life are repressed and punished as appropriate.
 (f) This response by the State includes the duty **to promptly initiate an independent and impartial investigation**. The investigation must, firstly, be capable of ascertaining the circumstances in which the incident took place and identifying shortcomings in the operation of the regulatory system, and secondly, it must be capable of identifying the public officials or authorities involved in the chain of events in issue.
 (g) If the infringement of the right to life is unintentional, civil, administrative or even disciplinary **remedies** may be a sufficient response. However, the Court has found that, in particular in the case of dangerous activities, where the public authorities were fully aware of the likely consequences and disregarded the powers vested in them, hence failing to take measures that are necessary and sufficient to avert certain risks which might involve loss of life, Article 2 may require that **those responsible for endangering life be charged with a crime**

^{xlvi} Council of Europe, updated Manual on Human Rights and the Environment (third edition 2021), Section A, Chapter III, paras. (c), (d):

' (c) For an issue **environmental factors must have a directly harmful effect or seriously risk the enjoyment of private and family life or home and correspondence** of individuals. Thus, there are two issues which the Court must consider – whether a causal link exists between the activity and the negative impact on the individual and whether the adverse effects have attained a certain threshold of harm. The assessment of that minimum threshold depends on all the circumstances of the case, such as the intensity and duration of the nuisance and its physical or mental effects, as well as on the general environmental context.
 (d) While the objective of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it may also imply in some cases an obligation on public authorities to adopt positive measures designed to secure the rights enshrined in this Article. **This obligation does not only apply in cases where environmental harm is directly caused by State activities but also when it results from private sector activities**. Public authorities must make sure that such measures are implemented so as to guarantee rights protected under Article 8. The Court has furthermore explicitly recognised that public authorities may have a duty to inform the public about environmental risks. Moreover, the Court has stated with regard to the scope of the positive obligation that it is generally irrelevant of whether a situation is assessed from the perspective of paragraph 1 of Article 8 which, inter alia, relates to the positive obligations of State authorities, or paragraph 2 asking whether a State interference was justified, as the principles applied are almost identical. '

^{xlvii} Council of Europe, updated Manual on Human Rights and the Environment (third edition 2021), Section A, Chapter III, para. (c):

' (c) On the **protection of the individual right to the peaceful enjoyment of** o
require the public authorities to ensure certain environmental standards. The effective exercise of this right does not depend merely on the public authorities to take positive measures to interfere
to protect this right, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his or her effective enjoyment of his or her possessions. The Court has found that such an obligation may arise in respect of dangerous activities and t

^{xlviii} Council of Europe, updated Manual on Human Rights and the Environment (third edition 2021), Section A, Chapter IV, para. (a):

' (The) **right to receive and impart information and ideas** is guaranteed by Article 10 of the Convention. **In the particular context of the environment**, the Court has found that **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**. '

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

' The Government have pointed out that the applicants were not j
 protection afforded to the press under Article 10. The Court considers, however, that in a democratic society even small and informal campaign groups, such as London Greenpeace, must be able to carry on their activities effectively and that there exists a strong public interest in **enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment** (see, *mutatis mutandis*, *Bowman v. the United Kingdom*, judgment of 19 February 1998, Reports 1998-I, and *Appleby and Others v. the United Kingdom*, no. 44306/98, ECHR 2003-V I) . '

^{xlix} Similar wording in *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity* (Adopted by the Committee of Ministers on 31 March 2010), para. II (9):

' **Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed** without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order. '

ⁱ Similar wording in *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity (Adopted by the Committee of Ministers on 31 March 2010)*, para. II (9):

‘ ‘ **Member States should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed** without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order. ’ ’

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

‘ ‘ 38. The right to form an association is an inherent part of the right set forth in Article 11 of the Convention. **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 the right to freedom of association**, without which that right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association’s aims and activities are lawful and legitimate, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions [...]. ’ ’

ⁱⁱⁱ Council of Europe, *updated Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter V, para. (d):

‘ ‘ **The right to respect freedom of peaceful assembly and freedom of association is guaranteed by Article 11 of the Convention. This includes the unobstructed right to peaceful assembly and the ability to form a legal entity (association), in order to act collectively in a field of mutual interest such as environmental matters.** Restrictions by public authorities on the exercise of the right to freedom of peaceful assembly and the right to freedom of association with regard to environmental matters should be prescribed by law, pursue a legitimate aim and be necessary in a democratic society and proportionate to the legitimate aim pursued. A fair balance should be struck between the exercise of the right to freedom of assembly and freedom of association and the protection of the environment. ’ ’

ⁱⁱⁱⁱ Council of Europe, *updated Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter V, paras. (e), (f), (g):

‘ ‘ **Articles 2 and 8 of the Convention** may however impose a specific positive obligation on public authorities to ensure a right of access to information in relation to environmental issues in certain circumstances. (f) This obligation to ensure access to information is generally complemented by the positive obligations of the public authorities to provide information to those persons whose right to life under Article 2 or whose right to respect for private and family life and the home under Article 8 are threatened. The Court has found that in the particular context of dangerous activities falling within the responsibility of the State, special emphasis should be placed on the public’s right to information. Additionally, the Court held that States are duty-bound based on Article 8 to **adequately inform the public about any life threatening emergencies, including natural disasters.** (g) Access to information is of importance to individuals because it can allay their fears and **enables them to assess the environmental danger to which they may be exposed.** ’ ’

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

‘ ‘ 60. **Les atteintes graves à l’environnement peuvent toucher le bien-être des personnes et les priver de la jouissance de leur domicile de manière à nuire à leur vie privée et familiale (voir, mutatis mutandis, l’arrêt López Ostra précité, p. 54, § 51).** En l’espèce, les requérantes sont restées, jusqu’en 1994, dans l’attente d’informations essentielles qui leur auraient permis de prendre des mesures pour elles et leurs proches du fait de continuer à résider sur le territoire de Manfredonia, une commune aussi exposée au danger en cas d’accident dans l’enceinte de l’usine. La Cour constate donc que l’Etat défendeur a failli à son obligation de garantir le droit à une vie privée et familiale, au mépris de l’article 8 de la Convention. Par conséquent, il y a eu violation de cette disposition. ’ ’

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

‘ ‘ **Article 5 COLLECTION AND DISSEMINATION OF ENVIRONMENTAL INFORMATION**

1. Each Party shall ensure that:

- (a) **Public authorities possess and update environmental information** which is relevant to their functions;
- (b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment;
- (c) In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.

2. Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible, inter alia, by:

- (a) Providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained;
- (b) Establishing and maintaining practical arrangements, such as:
 - (i) Publicly accessible lists, registers or files;
 - (ii) Requiring officials to support the public in seeking access to information under this Convention; and
 - (iii) The identification of points of contact; and

- (c) Providing access to the environmental information contained in lists, registers or files as referred to in subparagraph (b) (i) above free of charge.
3. Each Party shall **ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks**. Information accessible in this form should include:
- (a) Reports on the state of the environment, as referred to in paragraph 4 below;
- (b) Texts of legislation on or relating to the environment;
- (c) As appropriate, policies, plans and programmes on or relating to the environment, and environmental agreements; and
- (d) Other information, to the extent that the availability of such information in this form would facilitate the application of national law implementing this Convention, provided that such information is already available in electronic form.
4. Each Party shall, at regular intervals not exceeding three or four years, publish and disseminate a national report on the state of the environment, including information on the quality of the environment and information on pressures on the environment.
5. Each Party shall take measures within the framework of its legislation for the purpose of **disseminating**, inter alia:
- (a) **Legislation and policy documents** such as documents on strategies, policies, programmes and action plans relating to the environment, and progress reports on their implementation, prepared at various levels of government;
- (b) **International treaties, conventions and agreements on environmental issues**; and
- (c) **Other significant international documents on environmental issues**, as appropriate.
6. **Each Party shall 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**, where appropriate within the framework of voluntary eco-labelling or eco-auditing schemes or by other means.
7. Each Party shall:
- (a) Publish the facts and analyses of facts which it considers relevant and important in framing major **environmental policy proposals**;
- (b) Publish, or otherwise make accessible, available explanatory material on its dealings with the public in matters falling within the scope of this Convention; and
- (c) Provide in an appropriate form information on the performance of public functions or the provision of public services relating to the environment by government at all levels.
8. Each Party shall develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices.
9. Each Party shall take steps to establish progressively, taking into account international processes where appropriate, a coherent, nationwide system of pollution inventories or registers on a structured, computerized and publicly accessible database compiled through standardized reporting. Such a system may include inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and off-site treatment and disposal sites.
10. Nothing in this article may prejudice the right of Parties to refuse to disclose certain environmental information in accordance with article 4, paragraphs 3 and 4.''

^{lv} Council of Europe, *updated Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter V, para. (h):
 ‘ ‘ (h) Moreover, the Court has established criteria on the basis of which **public authorities engage in dangerous activities which they know involve adverse risks to health, they must establish an effective and accessible procedure to enable individuals to seek all relevant and appropriate information**. Moreover, if environmental and health impact assessments are carried out, the public needs to have access to those study results.’ ’

^{lvi} *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):

‘ ‘ Article 4 ACCESS TO ENVIRONMENTAL INFORMATION

1. **Each Party shall ensure that**, subject to the following paragraphs of this article, **public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation**, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

(a) **Without an interest having to be stated**;

(b) In the form requested unless:

(i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or

(ii) The information is already publicly available in another

UN Human Rights Council, ‘ Report of the Special Rapporteur on the issue of human rights and the environment, *Annex*’, *Annex* to the Report of the Special Rapporteur on the issue of human rights and the environment, (24 January 2018) UN Doc. A/HRC/37/59, p. 11:

‘ Framework principle 7

States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request.

Commentary

[...]

19. Second, States should provide affordable, effective and timely access to environmental information held by public authorities, upon the request of any person or association, **without the need to show a legal or other interest**. Grounds for refusal of a request should be set out clearly and construed narrowly, in light of the public interest in favour of disclosure. States should also provide guidance to the public

^{lvii} Council of Europe, *updated Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter VI, para. (a):

‘ ‘ **When making decisions which relate to the environment, public authorities must take into account the interests of individuals who may be affected.** In this context, **it is important that the public is able to make representations to the public authorities.** ’ ’

^{lviii} *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):

‘ ‘ Article 6 PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACT
[...]

8. Each Party shall **ensure that in the decision due account is taken of the outcome of the public participation.** ’ ’

‘ ‘ Article 7 PUBLIC CONCERNING PLANS, PROGRAMMES AND POLICIES RELATING TO THE ENVIRONMENT

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, **article 6**, paragraphs 3, 4 and **8, shall be applied.** The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the

‘ ‘ Article 8 PUBLIC PARTICIPATION IN THE PREPARATION OF EXECUTIVE REGULATIONS AND/OR GENERALLY APPLICABLE LEGALLY BINDING NORMATIVE INSTRUMENTS

Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To this end, the following steps should be taken:

- (a) Time-frames sufficient for effective participation should be fixed;
- (b) Draft rules should be published or otherwise made publicly available; and
- (c) The public should be given the opportunity to comment, directly or through representative consultative bodies. The result of **the public participation shall be taken into account as far as possible.** ’ ’

^{lix} *Convention on Biological Diversity* (5 June 1992), 1760 UNTS 69:

‘ ‘ Article 14. Impact Assessment and Minimizing Adverse Impact

1. Each Contracting Party, as far as possible and as appropriate, shall:

- (a) **Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects** and, where appropriate, allow for public participation in such procedures;

UN General Assembly, *Rio Declaration on Environment and Development* (12 August 1992), UN Doc. A/CONF.151/26 (Vol. I):

‘ ‘ Principle 17

Environmental impact assessment, as a national instrument, shall be undertaken **for proposed activities that are likely to have a significant adverse impact on the environment** and are subject to a decision of a competent national authority. ’ ’

Paris Agreement (2015):

‘ ‘ Article 7

[...]

9. Each Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include:

[...]

- (c) The **assessment** of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, **taking into account vulnerable people, places and ecosystems;** ’ ’

Tăța Romania, judgment of 27 January 2009:

112. [...] La Cour conclut que les autorités roumaines ont failli à leur **obligation d'évaluer et de prévenir les effets satisfaisants** les risques éventuels de l'activité en question le droits de intéressés au respect de leur vie privée et de leur domicile et environnement sain et protégé.

Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) (1991), UNTS vol. 1989, Art. 2(1):

‘ ‘ Parties shall, either individually or jointly, take all appropriate and effective measures to **prevent, reduce** and control significant adverse transboundary environmental impact from proposed activities. ’ ’

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) The measures taken **to avoid, prevent, reduce and, if possible, offset significant adverse effects on the environment**, in particular on species and habitats protected under Council Directive 92/43/EEC (1) and Directive 2009/147/EC of the European Parliament and of the Council (2), should contribute to avoiding any deterioration in the quality of the environment and any net loss of biodiversity, in accordance with the Union's commitments in the context of the Convention and the objectives and actions of the Union Biodiversity Strategy up to 2020 laid down in the Commission Communication of 3 May 2011 entitled ‘ **Our life insurance, our natural capital** ’

PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT TO THE CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT, Kiev, 21 May 2003:

‘ ‘ *With a view to promoting sustainable development and ensuring a high level of environmental protection, Member States should through strategic environmental assessment integrate environmental considerations into the preparation and adoption of plans and programmes which are likely to have significant effects on the environment.* ’ ’

^{lx} Council of Europe, *updated Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter VI, para. (b):

‘ ‘ **Where public authorities have complex issues of environmental and economic policy to determine, the decision-making process must involve appropriate investigations and studies in order to predict and evaluate in advance the effects on the environment and to enable them to strike a fair balance between the various**

lxv Council of Europe, *updated Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter VII, para. (e):

‘ ‘ (e) Where public authorities ~~environmental and economic policy~~, they must ensure that the decision-making process takes account of the rights and interests of the individuals whose rights under Articles 2 and 8 may be affected. **Where such individuals consider that their interests have not been given sufficient weight in the decision-making process, they should be able to appeal to a court.** ’ ’

lxvi *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):

‘ ‘ Article 9 ACCESS TO JUSTICE

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, **members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.** ’ ’

lxvii *Convention on the Protection of Environment through Criminal Law* (1998), ETS No. 172, Art. 11:

‘ ‘ Article 11 Rights for groups to participate in proceedings

Each Party may, at any time, in a declaration addressed to the Secretary General of the Council of Europe, declare that it will, in accordance with domestic law, **grant any group, foundation or association which, according to its statutes, aims at the protection of the environment, the right to participate in criminal proceedings** concerning offences established in accordance with this Convention. ’ ’

lxviii Council of Europe, *updated Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter VII, para. (f):

‘ ‘ (f) In addition to the right of access ~~that persons, who have an~~ **arguable claim that their rights and freedoms as set forth in the Convention have been violated, must have an effective remedy before a national authority.** ’ ’

lxix Similar wording in *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies (Adopted by the Committee of Ministers on 2 March 2016 at the Deputies)*, p. 22, para. 63:

‘ ‘ Member States must ensure access to justice and effective rights are violated. **In order to ensure that this access to justice and remedies is provided on an equal footing in culturally diverse societies, member States are encouraged to establish appropriate legal aid schemes.** ’ ’

International Covenant on Civil and Political Rights (ICCPR) (16 December 1966), UN Doc. A/6316, 999 UNTS 17, Art. 2(3)(c):

‘ ‘ Article 2

3. Each State Party to the present Covenant undertakes:

[...]

(c) **To ensure that the competent authorities shall enforce such remedies when granted.** ’ ’

lxx *Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment* (21 June 1993), ETS No. 150, Art. 2(8):

‘ ‘ Article 2 Definitions 2

8. "Measures of reinstatement" means any reasonable measures **aiming to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment.** Internal law may indicate who will be entitled to take

Convention on the Protection of Environment through Criminal Law (1998), ETS No. 172, Art. 6:

‘ ‘ Article 6 Sanctions for environmental offences

Each Party shall adopt, in accordance with the relevant international instruments, such appropriate measures as may be necessary to enable it to make the offences established in accordance with Articles 2 and 3 punishable by criminal sanctions which take into account the serious nature of these offences. The sanctions available shall include imprisonment and pecuniary sanctions and may include **reinstatement of the environment.** ’ ’

lxxi *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits), ECSR Complaint No. 30/2005, para. 235:

‘ ‘ 235. In this ~~that the mining industry is still one of the particularly dangerous~~ industries in which workers' and ~~safety risks~~ cannot be eliminated, and that Greek law still classifies mining as an arduous and hazardous occupation. It therefore considers that, in addition to **preventive and protective measure**, the state was required to provide for compensation in this sector. ’ ’

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.

lxxii Council of Europe, *updated Manual on Human Rights and the Environment* (third edition 2021), Section B, Chapter I, paras. (a), (b):

‘ ‘ (a) The right to just conditions of work is protected under guarantees workers the right to safe and healthy working conditions. **Where pollution may result in an infringement of these rights, States must adopt, apply, and effectively monitor safety and health regulations and provide additional benefits for workers engaged in dangerous or unhealthy occupations, such as mining.**

(b) Under Article 3 paragraph 1 of the 1961 Charter and Article 3 paragraph 2 of the Revised Charter, States are obliged to pay particular attention to workers exposed to the dangers of asbestos and ionizing radiation. States must **produce**

UN Human Rights Council, ' Report of the Special Rapporteur on the issue of human rights and the environment, *Annex with the findings, conclusions and recommendations*, on Human Rights, January 2018) UN Doc. A/HRC/37/59, p. 10:

' Framework principle 6

States should provide for education and public awareness on environmental matters.

Commentary

15. States have agreed that the education of the child shall be directed to, among other things, the development of respect for human rights and the natural environment. Environmental education should begin early and continue throughout the educational process. It should **increase students' understanding of the close relationship between human rights and the environment**, help them to appreciate and enjoy the natural world **and strengthen their capacity to respond to environmental challenges.**

Council of Europe, *updated Manual on Human Rights and the Environment* (third edition 2021), Appendix VI:

' ' Appendix VI: Good Practices aimed at protecting the environment in the context of the European Convention on Human Rights and the European Social Charter

6. Providing education on environmental sustainability

[#.] Environmental education, **as a part of education promoting sustainable development (ESD)**, is vital in imparting an inherent respect for nature amongst society, in enhancing public environmental awareness and in building their capacity to respond to environmental challenges. The term often implies education within the school system, from primary to post-secondary. However, it sometimes includes all efforts to educate the public and other audiences, including print materials, websites, media campaigns, etc.

UNESCO, *Berlin Declaration on Education for Sustainable Development*, World Conference held from 17 to 19 May 2021:

b) Integrate ESD into all levels of education and training from early childhood to tertiary and adult education, including technical and vocational education and training (TVET), and into non-formal education and informal learning, so that all individuals are provided with lifelong and life-wide learning opportunities for sustainable development;

^{lxxviii} 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 the findings, conclusions and recommendations*, on Human Rights (24 January 2018) UN Doc. A/HRC/37/59, p. 10

' Framework principle 6

States should provide for education and public awareness on environmental matters.

Commentary

[...]

16. **Increasing the public awareness of environmental matters should continue into adulthood.** To ensure that adults as well as children **understand environmental effects on their health and well-being**, States should make the public aware of the specific **environmental risks that affect them** and how they may **protect themselves from those risks**. As part of increasing public awareness, States should build the capacity of the public to understand environmental challenges and policies, so that they may fully exercise their rights to express their views on environmental issues (framework principle 5), understand environmental information, including assessments of environmental impacts (framework principles 7 and 8), participate in decision-making (framework principle 9) and, where appropriate, seek remedies for violations of their rights (framework principle 10). States should tailor environmental education and public awareness programmes to the culture, language and environment

Similar wording in *Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism* (Adopted by the Committee of Ministers on 27 March 2019 at the 1342nd meeting of the Ministers' Deputies), para. I.B.4.:

' ' I **Design, implement and promote regular national awareness-raising initiatives at all levels and through diverse forms of media** (for example the production of handbooks, guidelines, video clips available on the internet and in mainstream media, the introduction of a national day against sexism, the setting up of museums to celebrate gender equality and **these initiatives should aim to increase awareness and understanding among the general population**, especially parents, **of different forms of sexism, including phenomena such as sexual harassment, and of the harm they generate for individuals and society**, including girls and boys.

Convention on the Conservation of European Wildlife and Natural Habitats (1979) ETS No. 104, Art. 3(3):

' ' Article 3

3. Each Contracting Party shall promote education and disseminate general information on the need to **conserve species of wild flora and fauna and their habitats.**

Convention on Biological Diversity (5 June 1992), 1760 UNTS 69, Art. 13(b):

' ' Article 13. Public Education and Awareness

The Contracting Parties shall:

(b) Cooperate, as appropriate, with other States and international organizations in developing **educational and public awareness programmes**, with respect to **conservation and sustainable use of biological diversity.**

United Nations Framework Convention on Climate Change (UNFCCC) (1992), UNTS vol. 1771, Art. 6(a)(i):

' ' ARTICLE 6 EDUCATION, TRAINING AND PUBLIC AWARENESS

In carrying out their commitments under Article 4, paragraph 1 (i), the Parties shall:

(a) **Promote** and facilitate at the national and, as appropriate, subregional and regional levels, and in accordance with national laws and regulations, and within their respective capacities:

(i) **the development and implementation of educational and public awareness programmes on climate change and its effects;**

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):

' ' Article-building, Education and public awareness

3. The Parties shall cooperate with each other and through competent intergovernmental organizations, as well as with non-governmental organizations, in undertaking and supporting **public awareness and educational programmes** in both affected and, where relevant, unaffected country Parties to **promote understanding of the causes and effects of desertification and drought** and of the importance of meeting the objective of

Council of Europe, *updated Manual on Human Rights and the Environment* (third edition 2021), Appendix VI:

' ' Appendix VI: Good Practices aimed at protecting the environment in the context of the European Convention on Human Rights and the European Social Charter

[...]

35. In accordance with the Guiding Principles on Business and Human Rights, the responsibility of business enterprises to respect human rights includes the responsibility to **avoid causing or contributing to adverse human rights impacts through environmental harm, to address such impacts when they occur and to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships.** Businesses should comply with all applicable environmental laws, issue clear policy commitments to meet their responsibility to respect human rights through environmental protection, implement human rights due diligence processes (including human rights impact assessments) to identify, prevent, mitigate and account for how they address their environmental impacts on human rights, and enable the remediation of any adverse environmental human rights impacts they cause or to which they contribute. ’ ’

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* (21 March 2011), UN Doc. A/HRC/17/31: a n d R e m e

“Human rights due diligence

[...]

18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of **their business relationships.** This process should:

(a) Draw on internal and/or independent external human rights expertise;

(b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation

lxxxii 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* (21 March 2011), UN Doc. A/HRC/17/31: a n d R e m e

“III. Access to remedy

A. Foundational principle

25. **As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.** ’ ’

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’ Deputie*

’ ’ **Member States should** ensure the effective implementation of their obligations under Articles 6 and 13 of the European Convention on Human Rights and other international and European human rights instruments, to grant to everyone access to a court in the determination of their civil rights, as well as to everyone whose rights have been violated under these instruments, an **effective remedy** before a national authority, including where such violation arises from business activity. ’ ’

UN Human Rights Council, Report of the Special Representative of the Secretary General on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John Ruggie, Annex with *Guiding Principles on Human Rights* (24 January 2018) UN Doc. A/HRC/37/59:

’ Framework principle 12

States should ensure the effective enforcement of their environmental standards against public and private actors.

Commentary

34. Governmental authorities must comply with the relevant environmental standards in their own operations, and they must also monitor and effectively enforce compliance with the standards by preventing, investigating, punishing and redressing violations of the standards by private actors as well as governmental authorities. In particular, States must regulate business enterprises to protect against human rights abuses **resulting from environmental harm and to provide for remedies for such abuses.** [...]

Convention on the Protection of Environment through Criminal Law (1998), ETS No. 172, Preamble, Art. 9:

’ ’ **Relevant environmental violations** having serious consequences must be established as criminal offences subject to appropriate sanctions;

[...]

Article 9 – Corporate liability

1. Each Party shall **adopt such appropriate measures as may be necessary to enable it to impose criminal or administrative sanctions or measures on legal persons on whose behalf an offence referred to in Articles 2 or 3 has been committed by their organs or by members thereof or by another representative.**

2. Corporate liability under paragraph 1 of this article shall not exclude criminal proceedings against a natural person. ’ ’

lxxxiii Similar wording in *Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe* (*Adopted by the Committee of Ministers on 28 November 2018 at the 1330th meeting of the Ministers’ Deputies*), Appendix, para. 1(a):

’ ’ Appendix to Recommendation CM/Rec(2018)11

I. National legal framework and political and public environment to protect and promote civil society space

Member States should:

a. **ensure an enabling legal framework and a conducive political and public environment for human rights defenders, enabling individuals, groups, civil society organisations and national institutions for the protection and promotion of human rights (NHRIs) to freely carry out activities, on a legal basis, consistent with international law and standards, to strive for the protection and promotion of all human rights and fundamental freedoms;** ’ ’

UN Human Rights Council, Report of the Special Representative of the Secretary General on the situation of human rights in the world, A/HRC/45/21, para. 3:

’ ’ **It is the duty of the State to respect the right of everyone to promote and protect a safe, clean, healthy and sustainable environment, necessary for the enjoyment of a vast range of human rights. The State has a parallel duty to protect environmental human rights defenders from violations committed by both State and non-State actors.** Nevertheless, international human rights law makes it clear that business enterprises, the media and other non-

State actors are obliged to respect human rights obligations and refrain from contributing to or committing violations. The Special Rapporteur is therefore seriously concerned about the worrying numbers of killings and violence that, without doubt, underestimate the true extent of threats and risks faced by indigenous peoples. 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:

"Recalling the Guiding Principles on Business and Human Rights, which underscore the responsibility of all business enterprises to respect human rights, including the rights to life, liberty and security of human rights defenders working in environmental matters, referred to as **environmental human rights defenders**,"

^{lxxxiv} International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention* (27 June 1989), No. 169, Art. 14(1), 15(1):

' ' Article 14

1. The **rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised**. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect. ' ' ' ' Article 15

1. The **rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded**. These rights include the right of these peoples to participate in the use, management and conservation of these resources. ' ' ' ' Article 26

UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples (13 September 2007), UNGA Res. A/RES/61/295, Art. 26:

' ' Article 26

1. Indigenous peoples have the **right to the lands, territories and resources** which they have traditionally owned, occupied or otherwise used or acquired.

2. **Indigenous peoples have the right to own, use, develop and control the lands, territories and resources** that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories, and resources. Such recognition shall be conducted with due respect to the customs, traditions and laws

^{lxxxv} *Convention on Biological Diversity* (5 June 1992), 1760 UNTS 69, Art. 8(j):

' ' Article 8(j) Conservation

(j) Subject to its national legislation, **respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and 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 utilization of such knowledge, innovations and practices:** ' ' ' ' Article 26

^{lxxxvi} 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:

9.13 [...] The Committee consider **particularly impacted** by the effects of climate change, **both in terms of the manner in which they experience such effects as well as the potential of climate change to affect them throughout their lifetime**, in particular if immediate action is not taken. Due to the particular impact on children, and the recognition by States parties to the Convention that children are entitled to **special safeguards, including appropriate legal protection**, states have heightened obligations to protect children from foreseeable harm.³⁰

³⁰ Preamble; A/HRC/31/52, para. 81, CRC Report on the Environment, 2016, para. 23

^{lxxxvii} Similar wording in *Recommendation CM/Rec(2019)4 of the Committee of Ministers to member States on supporting young refugees in transition to adulthood* (Adopted by the Committee of Ministers on 24 April 2019 at the 1344th meeting of the Ministers' Deputies), para. II(22):

' ' **Member States should pay particular attention to the health and psychological needs of young refugees who arrived in Europe as unaccompanied and separated children, due to their particular vulnerability.** ' ' ' ' Article 26

^{lxxxviii} UN Human Rights Council, ' Report of the Special Rapporteur on the issue of enjoyment of a safe, clean, healthy and sustainable environment' (24 January 2018) UN Doc. A/HRC/37/59, para. 43:

' **Framework principle 14**

[...]

Commentary

[...]

4 For example, States should develop **disaggregated data on the specific effects of environmental harm on different segments of the population**, conducting additional **research** as necessary, to provide a basis for ensuring that their laws and policies adequately protect against such harm. States should take effective measures to raise the awareness of environmental threats among those persons who are most at risk. In monitoring and reporting on environmental issues, States should provide detailed information on the threats to, and status of, the most vulnerable. Assessments of the environmental and human rights impacts of proposed projects and policies must include a careful examination of the impacts on the most vulnerable, in particular. In the case of indigenous peoples and local communities,

