

CDDH-ENV(2021)03

18/10/2022

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**DRAFTING GROUP ON HUMAN RIGHTS AND ENVIRONMENT
(CDDH-ENV)**

**Drafting proposals for
a preliminary text of a non-binding instrument on the existing principles of
human rights and the protection of the environment**

Working document

Table of contents

Non-binding instrument (e.g., recommendation, guidelines) on human rights and the protection of the environment	3
[Preamble].....	3
[Appendix]	13
I. Relevant general principles.....	13
[No harm]	14
[Intergenerational equity]	15
[Prevention].....	16
[Precaution].....	16
[Polluter-pays]	17
[Environmental Impact Assessments (EIAs)]	18
[Non-discrimination and equality].....	18
II. Drafting proposals based on the principles emerging from the case law of the European Court of Human Rights as reflected in the updated draft Manual on Human Rights and the Environment	20
[Environmental disasters and the right to life].....	21
[Unhealthy detention environment and the right to freedom from inhuman or degrading treatment]	22
[Environmental harm and the right to respect for private and family life and the home]	23
[Environmental harm and the protection of property]	24
[Right to receive and impart information and ideas on environmental matters]	26
[Right to assemble and associate to collectively act in the interest of environmental matters]	26
[Access to information on environmental matters].....	27
[Decision-making on environmental matters and public participation in them]	30
[Environmental harm and the right to a remedy]	33
III. Drafting proposals based on principles emerging from conclusions and decisions of the European Committee of Social Rights as reflected in the Manual on Human Rights and the Environment.....	33
[Environmental pollution and the right to just conditions of work].....	34
[Environmental pollution and the right to safe and healthy working conditions]	34
[Right to a healthy environment]	35
[Right to housing and the environment].....	37
IV. Education and awareness	38
[Environmental education]	38
[Public awareness on environmental matters].....	39
V. Other actors.....	40
[Civil society]	40
[Non-State actors and subnational entities]	41
[Business and human rights related to the environment]	41
[Protection of environmental human rights defenders]	44
VI. Other measures.....	44
[Participation and inclusion of youth in environmental matters]	44
[Restorative sanctions]	45
[Broadened locus standi before national courts]	45
[Protection of indigenous communities and their environment]	45
[Development of national environmental policies and actions].....	46
[Coordination among member States related to environmental matters]	47

Non-binding instrument (e.g., recommendation, guidelines) on human rights and the protection of the environment

[Preamble]

The Committee of Ministers,

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 freedoms¹;

Reaffirming that all human rights are universal, indivisible, interdependent and interrelated and should be enjoyed by everyone without discrimination²;

Acknowledging the growing threats to the environment and the climate and the urgent need to act in an ambitious and concerted manner at the global level to better ensure their sustainability and protection³;

(The CDDH-ENV members may consider whether it will be more appropriate to combine the below recitals referring to the European Convention on Human Rights and the European Social Charter into a single recital and whether reference to the precise articles is necessary here⁴)

Recalling the essential role of the system of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, "the Convention") in the effective protection of human rights in Europe, including the case law of the European Court of Human Rights ("the Court"),⁵ [especially with regard to Articles 2 (Right to life), Article 3 (Prohibition of torture), Article 6 (Right to a fair trial), Article 8 (Right to respect for private and family life), Article 10 (Freedom of expression), Article

¹ Standard wording in many CoE recommendations e.g., *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)*:

"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 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)*:

"Reaffirming that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be enjoyed by everyone without discrimination;"

Vienna Declaration and Programme of Action (adopted by the World Conference on Human Rights in Vienna on 25 June 1993), I.5:

"5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

³ 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)*:

"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;"

⁴ Alternatives might include similar wording as 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)*:

"Recalling the member States' obligation to secure to everyone within their jurisdiction the rights and freedoms enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights; ETS No. 5) and the Protocols thereto, and where relevant their obligations arising from the European Social Charter (ETS No. 35, and from its revised version ETS No. 163), as well as other European or international human rights instruments;"

Or, a similar wording as in *Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the armed forces (Adopted by the Committee of Ministers on 24 February 2010 at the 1077th meeting of the Ministers' Deputies)*:

"Bearing in mind notably the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), in the light of the relevant case law of the European Court of Human Rights, the European Social Charter (ETS No. 35) as well as the Revised European Social Charter (ETS No. 163), taking into account the relevant case law of the European Committee on Social Rights"

⁵ Similar wording in *Recommendation CM/Rec(2019)5 of the Committee of Ministers to member States on the system of the European Convention on Human Rights in university education and professional training (Adopted by the Committee of Ministers on 16 October 2019 at the 1357th meeting of the Ministers' Deputies)*, p. 1:

"Recalling the essential role of the system of the European Convention on Human Rights (ETS No. 5, "the Convention") in the effective protection of human rights in Europe, the system including not only the Convention and the case law of the European Court of Human Rights ("the Court") but also the proceedings before the Court and the execution of its judgments;"

11 (Freedom of assembly and association), Article 13 (Right to an effective remedy) and Article 1 (Protection of property) of the Protocol No. 1 to the Convention]⁶;

Reaffirming that the Convention is a living instrument which must be interpreted in the light of present-day conditions⁷ and that in today's society the protection of the environment is an increasingly important consideration⁸;

Having regard to the European Social Charter, opened for signature in 1961 (ETS No. 35) and revised in 1996 (ETS No. 163), (hereafter "the Charter"), [in particular the inclusion of the right to a healthy environment as part of Article 11 (Right to protection of health),⁹ as well as Article 2 (Right to just conditions of work), Article 3 (Right to safe and healthy working conditions) and Article 31 (Right to housing), as well as the relevant conclusions and decisions of the European Committee of Social Rights]¹⁰;

⁶ See Council of Europe, *updated draft Manual on Human Rights and the Environment (third edition 2021)*, Section A, Chapter I – VIII

Similar wording in *Recommendation CM/Rec(2018)6 of the Committee of Ministers to member States on terrorists acting alone Adopted by the Committee of Ministers on 4 April 2018 at the 1312th meeting of the Ministers' Deputies*):

"Having regard to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, "the Convention") and the case law of the European Court of Human Rights, especially with regard to Articles 2 (Right to life), 3 (Prohibition of torture), 5 (Right to liberty and security), 6 (Right to a fair trial), 8 (Right to respect for private and family life), 9 (Freedom of thought, conscience and religion), 10 (Freedom of expression) and 11 (Freedom of assembly and association) of the Convention;"

⁷ *Tyler v. The United Kingdom* (Judgment) (25 April 1978), ECHR Application no. 5856/72, para. 31:

"31. [...] The Court must also recall that the Convention is a living instrument which, as the Commission rightly stressed, must be interpreted in the light of present-day conditions. In the case now before it the Court cannot but be influenced by the developments and commonly accepted standards in the penal policy of the member States of the Council of Europe in this field. [...]"

Similar wording in *Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors (Adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers' Deputies)*, II. Principles, Freedom of Expression, para. 8:

"8. The Convention is a living instrument which is to be interpreted in light of present-day conditions and in a way that ensures that all of the rights it guarantees are not theoretical or illusory but practical and effective, both in terms of the substance of those rights and the remedies available in case of their violation."

⁸ *Fredin v. Sweden* (No. 1) (Judgment) (18 February 1991), ECHR Application no. 12033/86, para. 48:

"48. The applicants did not contest the legitimacy of the aim of the 1964 Act, that is the protection of nature. The Court recognises for its part that in today's society the protection of the environment is an increasingly important consideration."

Greater consideration of environmental concerns was the basis for including 'the environment' as one of three examples dealt with during the seminar on *'The Convention as a Living Instrument at 70'* organised by the Court in connection with the at its 'Opening of the Judicial Year 2020', see: European Court of Human Rights, *'The Convention as a Living Instrument at 70'* (Background Document, Judicial Seminar 2020), Chapter B, p. 13: "B. The Environment

Even though the European Convention on Human Rights does not as such enshrine a right to a healthy environment, the Court has developed a significant body of case-law in environmental matters. This is because the exercise of certain Convention rights may be undermined by pollution and exposure to environmental hazards."

⁹ *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits), ECSR Complaint No. 30/2005, para. 195:

"195. The Committee has therefore taken account of the growing link that states party to the Charter and other international bodies (see below) now make between the protection of health and a healthy environment, and has interpreted Article 11 of the Charter (right to protection of health) as including the right to a healthy environment."

¹⁰ See Council of Europe, *updated draft Manual on Human Rights and the Environment (third edition 2021)*, Section B, Chapter I – III

Similar wording in *Recommendation CM/Rec(2015)3 of the Committee of Ministers to member States on the access of young people from disadvantaged neighbourhoods to social rights (Adopted by the Committee of Ministers on 21 January 2015 at the 1217th meeting of the Ministers' Deputies)*, Preamble:

"Having regard to the European Social Charter, opened for signature in 1961 (ETS No. 35) and revised in 1996 (ETS No. 163), (hereafter "the European Social Charter"), in particular its Article 1 (The right to work), Article 7 (The right of children and young persons to protection), Article 9 (The right to vocational guidance), Article 10 (The right to vocational training), Article 11 (The right to protection of health), Article 15 (The rights of persons with disabilities to independence, social integration and participation in the life of the community), Article 17 (The right of children and young persons to social, legal and economic protection), Article 19 (The rights of migrant workers and their families to protection and assistance), Article 21 (The right to information and consultation), Article 30 (The right to protection against poverty and social exclusion) and Article 31 (The right to housing), as well as the relevant conclusions and decisions of the European Committee of Social Rights and the reports of the Governmental Committee;"

Reaffirming that the Charter is a living instrument,¹¹ and a healthy environment is at the heart of the Charter's system of guarantees and may be relevant to the application of a variety of Charter provisions more specifically¹²;

Taking note in this regard of the *Manual on human rights and the environment – Principles emerging from the case-law of the European Court of Human Rights and decisions and conclusions of the European Committee of Social Rights*, published by the Council of Europe in 2006 and subsequently updated in 2012 and in 2021;¹³

Underlining the Council of Europe's commitment to environmental protection which has resulted in the elaboration of the 1979 Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention, ETS No. 104), the 1993 Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (ETS No. 150) and the 1998 Convention on the Protection of the Environment through Criminal Law (ETS No. 172)¹⁴;

Recalling that the Parliamentary Assembly in its Recommendations 1431 (1999) on future action to be taken by the Council of Europe in the field of environment protection, 1614 (2003) on the environment and human rights and 1885 (2009) concerning the right to a healthy environment, has proposed adding an environmental component to the European Convention on Human Rights¹⁵;

Resolves to consider further the potential of the Council of Europe instruments in this field¹⁶;

¹¹ *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits), ECSR Complaint No. 30/2005, para. 194:

"194. The Committee highlights that **the Charter is a living instrument**, whose purpose is to protect rights not merely theoretically but also in fact (International Commission of Jurists v. Portugal (Complaint No. 1/1998), decision on the merits of 9 September 1999, §32). It therefore interprets the rights and freedoms set out in the Charter in the light of current conditions."

¹² *ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland* (Decision on Admissibility and on Immediate Measures) (22 January 2019), ECSR Complaint No. 163/2018, para. 12:

"12. The Committee considers that at a general level all three organisations have missions and aims, and engage in activities, that are in certain respects relevant to values and rights protected by the Charter and its scope of application. Issues such as social justice and equality, **protection and creation of a healthy environment**, fair labour standards in the context of trade liberalization, **are at the heart of the Charter's system of guarantees and may be relevant to the application of a variety of Charter provisions more specifically**. In this respect, the Committee finds that the complainants can be considered as representative organisations within the meaning of Article 2 of the Protocol."

¹³ 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):

"Recalling the obligations of the member States under the European Convention on Human Rights and the steady development of the case-law by the European Court of Human Rights and national courts that foster the interconnection between the protection of the environment and human rights; **taking note** in this regard **of the Manual on human rights and the environment – Principles emerging from the case-law of the European Court of Human Rights, published by the Council of Europe in 2006/2012**, which is now in the process of being updated;

Recalling furthermore the corresponding obligations under the European Social Charter, including the European Social Charter (revised) and the measures adopted for their implementation at the European and national level;"

¹⁴ 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):

"**Underlining the Council of Europe's commitment to environmental protection which has also resulted in the elaboration of the 1979 Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention, ETS No. 104), the 1993 Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (ETS No. 150) and the 1998 Convention on the Protection of the Environment through Criminal Law (ETS No. 172);"**

¹⁵ 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):

"**Recalling that the Parliamentary Assembly through its Recommendation 1431 (1999) on future action to be taken by the Council of Europe in the field of environment protection, its Recommendation 1614 (2003) on the environment and human rights and, finally, its Recommendation 1885 (2009) concerning the right to a healthy environment, has proposed adding an environmental component to the European Convention on Human Rights;**"

¹⁶ 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):

"**Resolves to consider further the potential of the Council of Europe instruments in this field** and, as a first step, call on the Committee of Ministers to invite its Steering Committee for Human Rights (CDDH) to elaborate a draft non-binding instrument on human rights and the environment for the possible adoption by the Committee of Ministers at the latest by the end of next year."

Welcoming the increased recognition of the right to a healthy and protected environment¹⁷ in national constitutions¹⁸ and various regional human rights instruments, and affirming that the exercise of human rights helps to protect the environment and to promote sustainable development¹⁹;

Aware that the effects of environmental degradation often have a profound impact on the enjoyment of human rights at the national, regional and global level, and therefore recognising the need for effective cooperation and coordination amongst member States to take all appropriate and effective measures to prevent, reduce and control any adverse transboundary environmental impact²⁰;

¹⁷ *Tătar v. Romania* (Judgment) (27 January 2009), ECHR Application no. 67021/01 in French only), paras. 107, 112: “107. Elle estime toutefois que malgré l’absence d’une probabilité causale en l’espèce, l’existence d’un risque sérieux et substantiel pour la santé et pour le bien-être des requérants faisait peser sur l’État l’obligation positive d’adopter des mesures raisonnables et adéquates capables à protéger les droits des intéressés au respect de leur vie privée et leur domicile et, plus généralement, **à la jouissance d’un environnement sain et protégé**. En l’espèce, cette obligation subsistait à la charge des autorités tant avant la mise en fonctionnement de l’usine Sasar qu’après l’accident de janvier 2000. A cet égard, la Cour observe qu’en 1992 l’État roumain invita l’Institut de recherche du ministère de l’Environnement à mener une étude d’impact sur l’environnement. Sept ans plus tard, l’État défendeur, actionnaire de la société Aurul, décida d’autoriser la mise en fonctionnement de celle-ci, en se basant principalement sur les conclusions de cette étude, réalisée en 1993.

[...]

112. La Cour observe également qu’au-delà du cadre législatif national instauré par la loi sur la protection de l’environnement, des normes internationales spécifiques existaient, qui auraient pu être appliquées par les autorités roumaines (voir le paragraphe 12 ci-dessus). Contrairement à l’affaire Asselbourg précitée, que le Gouvernement défendeur invoque, les conditions d’exploitation fixées par les autorités roumaines en l’espèce se sont révélées insuffisantes pour prévenir une situation lourde de conséquences pour l’environnement et le bien-être de la population (cf. Budayeva précitée, § 149). La Cour conclut que les autorités roumaines ont failli à leur obligation d’évaluer au préalable d’une manière satisfaisante les risques éventuels de l’activité en question et de prendre des mesures adéquates capables de protéger les droits de intéressés au respect de leur vie privée et de leur domicile et, plus généralement, **à la jouissance d’un environnement sain et protégé**.”

The Court’s press releases regarding this case refers to ‘a healthy and protected environment’ (un environnement sain et protégé):

Di Sarno and others v. Italy (Judgment) (10 January 2012), ECHR Application no. 30765/08, para. 110:

“110. The collection, treatment and disposal of waste are without doubt dangerous activities (see, mutatis mutandis, Oneryildiz, cited above, § 71). That being so, the State was under a positive obligation to take reasonable and adequate steps to protect the right of the people concerned to respect for their homes and their private life and, more generally, **to live in a safe and healthy environment** (see *Tătar*, cited above, § 107). Regard must also be had to the margin of appreciation the States enjoy in the choice of the concrete means they use to fulfil their positive obligations under Article 8 of the Convention (see *Fadeyeva v. Russia*, no. 55723/00, § 96, ECHR 2005-IV).”

¹⁸ 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.

¹⁹ 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), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 4 February 2021:

“European Convention on Human Rights and European Social Charter

[...]

The case-law developments at the European level should thus inspire national governments and courts to **protect the environment through the protection of human rights**, including the right to life, health and shelter, as well as the right to private life and the right to receive and disseminate information.”

UN General Assembly, ‘Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’, Annex with ‘Framework Principles on Human Rights and the Environment’, (24 January 2018) UN Doc. A/HRC/37/59, p. 7:

“1. Human beings are part of nature, 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**.”

[...]

“Framework principle 1

States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.

Framework principle 2

States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.

Commentary on framework principles 1 and 2

[...]

4. [...] the exercise of human rights, including rights to freedom of expression and association, to education and information, and to participation and effective remedies, is vital to the protection of the environment.”

²⁰ 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), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 10 February 2021: “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.”

Bearing in mind that life and well-being on our planet is contingent on humanity's collective capacity to guarantee both human rights and a healthy environment to future generations²¹ and mindful of conducting actions guided by intragenerational and intergenerational equity²²;

Expressing grave concern about the disproportionate and/or discriminative effect environmental degradation may have on the rights of those who are in vulnerable situations and on marginalized groups²³ and conscious of the need for States to respect, promote and consider 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 jurisdiction²⁴;

Emphasizing the vital role of women in sustainable development matters and the need to promote gender equality and the empowerment of women²⁵;

Stressing the fundamental importance of science and education for sustainable development²⁶ 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, [as it promotes and encourages understanding of the importance of and the measures required for conservation and sustainable use of biological diversity,²⁷ builds the capacity of the public to understand environmental challenges, its

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 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.**"

²¹ 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 humanity's collective capacity to guarantee both human rights and a healthy environment to future generations:"

²² Les Club des Juristes, Draft Project "Global Pact for the Environment" (Paris, 24 June 2017), Preamble:

"Mindful of conducting actions guided by intragenerational and intergenerational equity,"

²³ Similar wording in *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 in member States;"

UN General Assembly, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', Annex with 'Framework Principles on Human Rights and the Environment', (24 January 2018) UN Doc. A/HRC/37/59, p. 16,17:

"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 "interface between exposure to the physical threats 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:

[...]."

²⁴ Les Club des Juristes, Draft Project "Global Pact for the Environment" (Paris, 24 June 2017), Preamble:

"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,"

²⁵ Les Club des Juristes, Draft Project "Global Pact for the Environment" (Paris, 24 June 2017), Preamble:

"Emphasizing the vital role of women in sustainable development matters and the need to promote gender equality and the empowerment of women,"

²⁶ Les Club des Juristes, Draft Project "Global Pact for the Environment" (Paris, 24 June 2017), Preamble:

"Stressing the fundamental importance of science and education for sustainable development"

²⁷ *Convention on Biological Diversity* (5 June 1992), 1760 UNTS 69, Art. 13:

"Article 13. **Public Education and Awareness**

The Contracting Parties shall:

causes and effects, and creates awareness of environmental effects on peoples' health and well-being]²⁸;

Underscoring the positive, important and legitimate roles of all human rights defenders, including environmental human rights defenders, in independently 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 environment²⁹;

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,³⁰

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,

(a) **Promote and encourage understanding of the importance of and the measures required for, the conservation of biological diversity**, as well as its propagation through media, and the inclusion of these topics in educational programmes;

(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**."

²⁸ *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 19 Capacity-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 this Convention. [...]"

UN General Assembly, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', Annex with 'Framework Principles on Human Rights and the Environment' (24 January 2018) UN Doc. A/HRC/37/59, 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 humans 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 environmental situation of particular populations."

²⁹ 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):

"**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 of States in this regard;"

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 journalists, and should not therefore attract 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)."

³⁰ Les Club des Juristes, Draft Project "Global Pact for the Environment" (Paris, 24 June 2017), Preamble:

"**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,**"

noting in particular that the said Declaration acknowledged that³¹ “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,”³² that “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 a healthy environment to future generations,”³³ and that “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.”³⁴

Taking note of the High Level International Conference on Human Rights and Environmental Protection “Human Rights for the Planet” (5 October 2020, Strasbourg), 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 everyone’s rights to life, health, quality private and family life or home, depends on healthy ecosystems and their benefits to people³⁵;

Bearing in mind the United Nations 2030 Agenda for Sustainable Development, including Sustainable Development Goals 3 (“Good health and well-being”), 6 (“Clean water and sanitation”), 7 (“Affordable and clean energy”), 11 (“Sustainable cities and communities”), 12 (“Responsible consumption and production”), 13 (“Climate action”), 14 (“Life below water”), and 15 (“Life on land”) which are of universal application³⁶;

³¹ 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)*:

“**Recalling the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities**, adopted on 6 February 2008, and its Guidelines for civil participation in political decision making, adopted on 27 September 2017, and **noting in particular that in the said Declaration the Committee of Ministers acknowledged that [...]**”

³² 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), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 13 January 2021:

“**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.**”

³³ 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), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 13 January 2021:

“**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 a healthy environment to future generations.**”

³⁴ Final Declaration by the Georgian Presidency of the Committee of Ministers, Environmental Protection and Human Rights, High-Level Conference organised under the aegis of the Georgian Presidency of the Committee of Ministers (Strasbourg, 27 February 2020), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 13 January 2021:

“**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.**”

³⁵ High Level International Conference on Human Rights and Environmental Protection “Human Rights for the Planet” (5 October 2020, Strasbourg) <<https://www.coe.int/en/web/portal/human-rights-for-the-planet>> accessed at 25 February 2021:

“**Clean environment is a precondition to the enjoyment of human rights: the full enjoyment of everyone’s rights to life, health, quality private and family life or home, depends on healthy ecosystems and their benefits to people.**

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?”

³⁶ 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)*:

“**Bearing in mind the United Nations 2030 Agenda for Sustainable Development, including Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”), Sustainable Development Goal 16 (“Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”) and Sustainable Development Goal 4 (“Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all”), which are of universal application;**”

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

Recalling Article 24(2)(c) of 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 in combating disease and malnutrition³⁷;

Convinced that the human rights are intertwined with and interdependent on the environment in which humans live and that environmental harm interferes with the enjoyment of human rights, and the exercise of human rights helps to protect the environment and to promote sustainable development³⁸;

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 realized³⁹;

2020), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 10 February 2021:

"Political Coordination among Member States

[...]

As a first step, the Organisation could consider a common approach to contributing to the **UN 2030 Agenda for Sustainable Development, starting with good health and well-being (Goal 3)**. Greater collective action at the European level would set a global precedent and reduce the foreseeable risk of irreparable harm to the human rights of future generations."

³⁷ Similar wording in *Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of human rights of older persons (Adopted by the Committee of Ministers on 19 February 2014 at the 1192nd meeting of the Ministers' Deputies)*:

"**Recalling the provisions relevant to older persons in the United Nations Convention on the Rights of Persons with Disabilities** and in the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe (2006-2015);"

Convention on the Rights of the Child (20 November 1989), 1577 UNTS 3, Art. 24(2)(c):

"Article 24

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

(c) **To combat disease and malnutrition**, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, **taking into consideration the dangers and risks of environmental pollution;**"

³⁸ UN General Assembly, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', Annex with 'Framework Principles on Human Rights and the Environment', (24 January 2018) UN Doc. A/HRC/37/59, p. 7, para. 1:

"1. Human beings are part of nature, 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."

Convention on Wetlands of International Importance especially as Waterfowl Habitat (2 February 1971, as amended in 1987), Preamble:

"**RECOGNIZING the interdependence of Man and his environment;**"

³⁹ *Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration)* (16 June 1972), Principle 1:

"Principle 1

Man has **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 [...]**"

Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion), ICJ Rep. 1996, para. 29:

"29. The Court recognizes that the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment. **The Court also recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn.** The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment."

Gabčíkovo-Nagymaros Project (Hungary v. Slovakia) (Judgment), ICJ Rep. 1997, para. 53:

"53. [...] The Court recalls that it has recently had occasion to stress, in the following terms, **the great significance that it attaches to respect for the environment, not only for States but also for the whole of mankind: "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn.** The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment." (*Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I. C. J. Reports 1996, pp. 241 -242, para. 29.)"

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

"Article 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."

European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (4 November 1950) ETS No. 5, Preamble:

"Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;"

Affirming that this [non-binding instrument] recalls the existing standards and practices in the field of human rights and the environment,⁴⁰ and supports the raising of awareness that human rights norms require the protection of the environment,⁴¹ so as to achieve tangible results for affected individuals and communities⁴²;

Being convinced that full and equal enjoyment of the protection of the environment by all members of democratic societies directly contributes to the increased enjoyment of all human rights⁴³;

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 guidelines set out in the appendix, and evaluate the effectiveness of the measures taken at regular intervals⁴⁴;
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 member States' obligations under the European Convention on Human Rights and the European Social Charter to protect the environment and contribute to the realisation of their obligations⁴⁵;

UN Economic and Social Council, 'Human Rights and the Environment' Final report prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur' (6 July 1994), UN Doc. E/CN.4/Sub.2/1994/9, para. 34:

"34. International human rights instruments contain few specific provisions relating to the environment. The Universal Declaration of Human Rights recognizes 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."

⁴⁰ 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 Council of Europe and in other fora, update the Handbook 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**."

⁴¹ UN General Assembly, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (24 January 2018) UN Doc. A/HRC/37/59, p. 5:

"16. Even without formal recognition, the term "the human right to a healthy environment" is already being used to refer 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. Nevertheless, it has real advantages. **It raises awareness that human rights norms require protection of the environment** and highlights that environmental protection is on the same level of importance as other human interests that are fundamental to human dignity, equality and freedom. It also helps to ensure that human rights norms relating to the environment continue to develop in a coherent and integrated manner. Recognition of the right in a General Assembly resolution would further strengthen all of these benefits."

⁴² Similar wording in Office of the High Commissioner for Human Rights, 'Guiding Principles for Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011), General Principles, p. 1, download available at: <<https://www.unglobalcompact.org/library/2>>:

"These Guiding Principles should be understood as a coherent whole and should be read, individually and collectively, in 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 globalization."

⁴³ 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. 10:

"**Being convinced that full and equal enjoyment** of human rights and fundamental freedoms **by all members of democratic and culturally diverse societies** directly contributes to peace and stability and may help to prevent intolerance potentially leading to violence and conflicts,"

UN General Assembly, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', Annex with 'Framework Principles on Human Rights and the Environment' (24 January 2018) UN Doc. A/HRC/37/59, p.7:

"Framework principle 1:

States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights."

⁴⁴ 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 1249th meeting of the Ministers' Deputies):

"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;**"

⁴⁵ 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 1249th meeting of the Ministers' Deputies):

"Recommends that the governments of the member States:

[...]

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 systems⁴⁶;
4. [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 Rights⁴⁷];
5. sign and/or ratify, and fully implement, Council of Europe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (Lugano Convention) (ETS No. 150)⁴⁸ and the Council of Europe Convention on the Protection of the Environment through Criminal Law (Strasbourg Convention) (ETS No. 172)⁴⁹;
6. sign and/or ratify, and fully implement the United Nations Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)⁵⁰ and the protocol thereto (Protocol on Pollutant Release and Transfer Registers)^{51 52};
7. examine, within the Committee of Ministers, the implementation of this non-binding instrument (e.g. Recommendation or guidelines) three [five] years after its adoption⁵³.

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;"

⁴⁶ 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 1249th meeting of the Ministers' Deputies)*:

"Recommends that the governments of the member States:

[...]

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;"

⁴⁷ 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. I(k):

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

[...]

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."

⁴⁸ *Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment* (21 June 1993), ETS No. 150; Council of Europe member States that have signed the Lugano Convention as of November 2020: Cyprus, Finland, Greece, Iceland, Italy, Liechtenstein, Luxembourg, the Netherlands and Portugal

⁴⁹ *Convention on the Protection of Environment through Criminal Law* (1998), ETS No. 172; Council of Europe member States that have ratified the Strasbourg Convention as of November 2020: Estonia

Council of Europe member States that have signed but not ratified the Strasbourg Convention as of November 2020: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Italy, Luxembourg, Romania, Sweden and Ukraine.

⁵⁰ *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)* (25 June 1998); All Council of Europe Member States are Party to this Convention as of November 2020, with the exception of Andorra, Monaco (signatory), the Russian Federation, San Marino and Turkey.

⁵¹ *Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (2003), UNTS vol. 2626; All Council of Europe Member States are Party to this Protocol as of December 2020, with the exception of Andorra, Armenia (signatory), Azerbaijan, Bosnia and Herzegovina (signatory), Georgia (signatory), Greece (signatory), Iceland, Liechtenstein, Monaco, Russian Federation and Turkey

⁵² Similar wording in *Declaration of the Committee of Ministers on the need to intensify the efforts to prevent and combat female genital mutilation and forced marriage in Europe (Adopted by the Committee of Ministers on 13 September 2017 at the 1293rd meeting of the Ministers' Deputies)*, para. 12(g):

"g. sign and/or ratify, and fully implement, the United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, the United Nations Convention on the Elimination of All Forms of Discrimination against Women and the amendment and protocol thereto, and other relevant international instruments;"

⁵³ Similar wording in *Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of human rights of older persons (Adopted by the Committee of Ministers on 19 February 2014 at the 1192nd meeting of the Ministers' Deputies)*:

"4. examine, within the Committee of Ministers, the implementation of this recommendation five years after its adoption."

[Appendix]

I. Relevant general principles

Principles contained in the Manual
<p>Appendix I: Glossary</p> <p>“No harm” principle The principle of “no harm” (<i>sic utere tuo ut alienum non laedas</i>) is at the core of international environmental law. According to the principle no state may act in a manner which inflicts damages on foreign territory, the population of the territory or foreign property. The International Court of Justice has reaffirmed the application of this principle to the environment in its Advisory Opinion on Nuclear Weapons. Moreover, the Trail Smelter case affirmed the existence of a positive obligation to protect other states (and hence their population) from damage by private companies. The principle has also been included in Principle 2 of the 1992 Rio Declaration and 2001 ILC the Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities.</p> <p>Precautionary principle The precautionary principle takes account of the effect that it is often difficult, if not impossible, to assess the precise impact of human action on the environment and that some actions can cause irreparable harm. It requires that if there is a strong suspicion that a certain activity may have detrimental environmental consequences, it is better to control that activity now rather than to wait for incontrovertible scientific evidence. It has been, inter alia, included in Article 15 of the Rio Declaration, and it played a role in justifying import restrictions in the WTO regime arguing that products had not been produced in a sustainable manner.</p> <p>Prevention principle The prevention principle is closely related to the precautionary principle. The prevention principle holds that it is generally cheaper and more efficient to prevent environmental catastrophes than to remedy their consequences. Consequently, when assessing the feasibility of preventive action versus remedial action, in the light of, for example, the interference with civil and political rights, preventive actions should be preferred. The principle has been included inter alia in the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 1989 and has also served as inspiration for the 1983 EC Environmental Action Programme.</p> <p>[...]</p> <p style="text-align: center;">* * *</p> <p>Appendix III: Reference to other instruments relevant to the to the environment in ECHR case-law and in the decisions and conclusions of the ECSR</p> <p>A. Reference to other instruments relevant to the environment in ECHR case-law</p> <p>The Court in its case-law has often made reference to international environmental law standards and principles. For instance, a core principle referred to by the Court is <i>sic utere tuo ut alienum non laedas</i> (principle of “no harm”), which has replaced the doctrine of absolute sovereignty. According to this principle no State may act in a manner which inflicts damages on foreign territory, the population of the territory or foreign property. The International Court of Justice has reaffirmed its application in the realm of the environment in its Advisory Opinion on Nuclear Weapons. Moreover, the Trail Smelter case affirmed the existence of a positive obligation to protect other States (and hence their population) from damage inflicted by private companies. This also appears in Principle 2 of the 1992 Rio Declaration and in the 2001 ILC Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities.</p>

The Court mentioned in *Tatar v. Romania* Principles 2 and 14 of the Rio Declaration under the list of relevant law. More importantly, it held in paragraph 111-112, as part of its reasoning: “Concernant ce dernier aspect, la Cour rappelle, dans l'esprit des principes no 21 de la Déclaration de Stockholm et no 14 de la Déclaration de Rio, le devoir général des autorités de décourager et prévenir les transferts dans d'autres États de substances qui provoquent une grave détérioration de l'environnement [...]. La Cour observe également qu'au-delà du cadre législatif national instauré par la loi sur la protection de l'environnement, des normes internationales spécifiques existaient, qui auraient pu être appliquées par les autorités roumaines.” In the same case the Court referred in paragraphs 69 and 120 to the related “**precautionary principle**”

To mention another example, the “**polluter pays**” principle”, contained e.g. in the Rio Declaration, holds that the polluter should in principle bear the cost of pollution regardless of where it occurs. The Court included in a number of cases in the list of relevant law the EU directive 2004/35/EC, which aims to establish a framework of environmental liability based on the “polluter pays” principle, with a view to preventing and remedying environmental damage. Moreover, in *Öneryıldız v. Turkey* it referred to the Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment, whose provision are an elaboration of the principle.

[...]

* * *

Appendix VI:

Good Practices aimed at protecting the environment and respecting the obligations stemming from the European Convention on Human Rights and the European Social Charter

[...]

3. Requiring environmental impact assessments (EIAs)

[...]

Drafting proposals for a non-binding instrument:

[No harm]

1. Member States should take all appropriate and effective measures to prevent, reduce and control the environmental impacts originating from their area of jurisdiction and control on the enjoyment of human rights in areas beyond national control, and cooperate internationally to address transboundary environmental degradation, e.g., through bilateral, regional or multilateral arrangements.⁵⁴

⁵⁴ *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

[Intergenerational equity]

2. Member States should protect, conserve and sustainably use the environment and natural resources for the benefit of present and future generations of humankind, on the basis of equity.⁵⁵ The

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

United Nations Framework Convention on Climate Change (UNFCCC) (1992), UNTS vol. 1771, Preamble:

"Recalling also that 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 and developmental 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.**"

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

Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion), ICJ Rep. 1996, para. 29:

"29. The Court recognizes that the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment. The Court also recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. **The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control** is now part of the corpus of international law relating to the environment."

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), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 10 February 2021:

"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."

Convention on Biological Diversity (5 June 1992), 1760 UNTS 69, Art. 14(1)(c):

"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;"

⁵⁵ The majority of the Council of Europe member states have laid down the need for preservation of the environment within their Constitutions. Additionally, the Constitutions of Albania, Andorra, Armenia, France, Georgia, Germany, Hungary, Latvia, Luxembourg, Norway, Poland and Sweden explicitly refer to the protection and preservation of the environment in light of the needs of future generations.

United Nations Framework Convention on Climate Change (UNFCCC) (1992), UNTS vol. 1771, Art. 3(1):

"ARTICLE 3 PRINCIPLES

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

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), Art. 1:

"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."

Convention on Biological Diversity (5 June 1992), 1760 UNTS 69, Preamble:

"Determined to **conserve and sustainably use** biological diversity for the benefit of present and future generations."

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (3 March 1973, as amended in 1983), Preamble:

"Recognizing that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be **protected for this and the generations to come**"

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

"Recognising that wild flora and fauna constitute a natural heritage of aesthetic, scientific, cultural, recreational, economic and intrinsic value that **needs to be preserved and handed on to future generations**"

Convention on the Conservation of Migratory Species of Wild Animals (23 June 1979), Preamble:

"AWARE that each generation of man holds the resources of the earth for future generations and has an obligation to ensure that this legacy **is conserved and, where utilized, is used wisely**"

present generations should strive for sustainable development and preserve living conditions, particularly the quality and integrity of the environment,⁵⁶ and should conduct their activities in recognition of the importance of protection natural systems, in the interest future generations.⁵⁷

[Prevention]

3. Member States should take the appropriate measures to ensure that dangerous activities and substances which are likely to cause pollution, pose a threat to health and social cohesion, deteriorate working conditions or affect the natural environment, biological diversity and landscapes, are reduced to a minimum. They should ensure the availability of adequate facilities for the environmentally sound management of such activities and substances, and ensure that the persons involved in the management of such activities or substances take such steps as are necessary to prevent pollution arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment.⁵⁸

[Precaution]

4. Member States should take precautionary measures to anticipate, prevent or minimize the causes of environmental degradation and mitigate its adverse effects.⁵⁹

United Nations, 'Report of the United Nations Conference on Environment and Development' (Rio de Janeiro, 3-14 June 1992), UN Doc. A/CONF/151/26/Rev.1 (Vol.I), p. 6, Annex I 'Rio Declaration on Environment and Development', Principle 3:

"Principle 3

The right to development must be fulfilled so as to **equitably meet developmental and environmental needs of present and future generations.**"

Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) (16 June 1972), Principle 2:

"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: Our Common Future' (Brundtland Report) (1987), Annex 1, p. 286, download available at: <http://www.environmentandsociety.org/mml/un-world-commission-environment-and-development-ed-report-world-commission-environment-and> :

"Inter-Generational Equity

2. States shall **conserve and use the environment and natural resources for the benefit of present and future generations.**"

⁵⁶ UNESCO, *Declaration on the Responsibilities of the Present Generations Towards Future generations* (12 November 1997), Art. 5(1):

"Article 5 - Protection of the environment

1. In order to ensure that future generations benefit from the richness of the Earth's ecosystems, **the present generations should strive for sustainable development and preserve living conditions, particularly the quality and integrity of the environment.**"

⁵⁷ UN General Assembly, 'World Charter for Nature' (9 November 1982), UN Doc. A/RES/37/7, Preamble:

"[...] Conscious of the spirit and terms of its resolutions 35/7 and 36/6, in which it solemnly invited Member States, in the 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.** [...]"

⁵⁸ GR-C 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. The **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**; [...]"

⁵⁹ *United Nations Framework Convention on Climate Change* (UNFCCC) (1992), UNTS vol. 1771, Art. 3(3):

5. Where there are threats of serious or irreversible damage to the environment, member States may not use the lack of full scientific certainty as a reason for postponing measures to prevent environmental degradation.⁶⁰

[Polluter-pays]

6. Member States should endeavour to promote the internalization of environmental costs and the use of economic instruments,⁶¹ taking into account that the operator whose activity has caused the environmental damage or the imminent threat of such damage is to be held financially liable, in order to induce operators to adopt measures and develop practices to minimise the risks of environmental damage so that their exposure to financial liabilities is reduced.⁶² The polluter should bear the expenses of carrying out pollution prevention and control measures decided by public authorities to ensure that the environment is in an acceptable state. The cost of these measures should be reflected in the cost

“ARTICLE 3 PRINCIPLES

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

[...]

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. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.”

United Nations, ‘Report of the United Nations Conference on Environment and Development’ (Rio de Janeiro, 3-14 June 1992), UN Doc. A/CONF/151/26/Rev.1 (Vol.I), p. 6, Annex I ‘Rio Declaration on Environment and Development’, Principle 15:

“Principle 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

⁶⁰ *United Nations Framework Convention on Climate Change (UNFCCC)* (1992), UNTS vol. 1771, Art. 3(3):

“ARTICLE 3 PRINCIPLES

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

[...]

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. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.”

United Nations, ‘Report of the United Nations Conference on Environment and Development’ (Rio de Janeiro, 3-14 June 1992), UN Doc. A/CONF/151/26/Rev.1 (Vol.I), p. 6, Annex I ‘Rio Declaration on Environment and Development’, Principle 15:

“Principle 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

Tătar v. Romania (Judgment) (27 January 2009), ECHR Application no. 67021/01, para. 120:

“120. Pour ce qui est des suites de l'accident de janvier 2000, la Cour observe qu'il ressort des éléments du dossier que l'activité industrielle en question n'a pas été arrêtée par les autorités, qui ont continué à utiliser la même technologie (voir le paragraphe 8 ci-dessus, in fine). En ce sens, la Cour rappelle l'importance **du principe de précaution** (consacré pour la première fois par la Déclaration de Rio), qui « **a vocation à s'appliquer en vue d'assurer un niveau de protection élevée de la santé, de la sécurité des consommateurs et de l'environnement, dans l'ensemble des activités de la Communauté** ».”

Gabčíkovo-Nagymaros Project (Hungary v. Slovakia) (Judgment), ICJ Rep. 1997, para. 140:

“140. [...] The Court is mindful that, **in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment** and of the limitations inherent in the very mechanism of reparation of this type of damage. [...]”

⁶¹ United Nations, ‘Report of the United Nations Conference on Environment and Development’ (Rio de Janeiro, 3-14 June 1992), UN Doc. A/CONF/151/26/Rev.1 (Vol.I), p. 6, Annex I ‘Rio Declaration on Environment and Development’, Principle 16:

“**National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account** the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.”

⁶² Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, para. (2):

“(2) The prevention and remedying of environmental damage should be implemented through the furtherance of the ‘polluter pays’ principle, as indicated in the Treaty and in line with the principle of sustainable development. The fundamental principle of this Directive should therefore be **that an operator whose activity has caused the environmental damage or the imminent threat of such damage is to be held financially liable, in order to induce operators to adopt measures and develop practices to minimise the risks of environmental damage so that their exposure to financial liabilities is reduced.**”

of goods and services which cause pollution in production and/or consumption. Such measures should not be accompanied by subsidies that would create significant distortions in international trade and investment.⁶³

[Environmental Impact Assessments (EIAs)]

7. Member States should introduce appropriate procedures requiring environmental impact assessments (EIAs) of its proposed activities that are likely to have significant adverse effects on the environment with a view to avoiding or minimizing such effects, taking into account vulnerable people, places and ecosystems.⁶⁴

[Non-discrimination and equality]

8. Member States should ensure the enjoyment of the rights and freedoms set forth in the Convention and the Charter without discrimination on any ground,⁶⁵ including human rights related to the environment. Member States should take all appropriate measures, including positive action,⁶⁶ to protect against environmental harm that results from or contributes to discrimination.⁶⁷

⁶³ OECD, Recommendation of the Council on Guiding Principles concerning International Economic Aspects of Environmental Policies (26 May 1975), OECD/LEGAL/0102, Annex, para. A(a)(4):

"4. The principle to be used for allocating costs of pollution prevention and control measures to encourage rational use of scarce environmental resources and to avoid distortions in international trade and investment is the so-called "Polluter-Pays Principle". This principle means that **the polluter should bear the expenses of carrying out the above-mentioned measures decided by public authorities to ensure that the environment is in an acceptable state. In other words, the cost of these measures should be reflected in the cost of goods and services which cause pollution in production and/or consumption. Such measures should not be accompanied by subsidies that would create significant distortions in international trade and investment.**"

⁶⁴ *Convention on Biological Diversity* (5 June 1992), 1760 UNTS 69, Art. 14(1) (a):

"Article 14. Impact Assessment and Minimizing Adverse Impacts

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:

"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), Art. 7(9)(c):

"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;**"

⁶⁵ *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) (4 November 1950) ETS No. 5, Art. 14:

"The enjoyment of **the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground** such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

European Social Charter (18 October 1961) (ETS No. 35), Preamble:

"Considering that **the enjoyment of social rights should be secured without discrimination on grounds** of race, colour, sex, religion, political opinion, national extraction or social origin;"

European Social Charter (revised) (3 May 1996) (ETS No. 163), Part V, Art. E:

"Article E – Non-discrimination

The **enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground** such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

⁶⁶ 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. 30:

"30. Member States should bear in mind that the prohibition of discrimination is violated when persons in analogous 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."

⁶⁷ UN General Assembly, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', Annex with 'Framework Principles on Human Rights and the Environment' (24 January 2018) UN Doc. /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

9. Member States should promote the principle of equality and the right of every person to be free from all forms of discrimination on any ground.⁶⁸ They should ensure equal access to, *inter alia*, environmental benefits,⁶⁹ access to information, participation in decision-making, access to justice in environmental matters,⁷⁰ and environmental education.⁷¹

10. Member States should pay particular attention to effect of environmental degradation on people in vulnerable situations and on members of marginalized groups,⁷² e.g., by developing disaggregated data on the specific effects of environmental harm on different segments of the population. They 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.⁷³

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."

⁶⁸ Similar wording in, 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:

"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."

⁶⁹ UN General Assembly, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', Annex with 'Framework Principles on Human Rights and the Environment', (24 January 2018) UN Doc. A/HRC/37/59, 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."

⁷⁰ *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 relevant provisions of this 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."

⁷¹ *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**."

⁷² 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):

"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**."

⁷³ UN General Assembly, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' Annex with 'Framework Principles on Human Rights and the Environment' (24 January 2018) UN Doc. A/HRC/37/59, p. 17, para. 43:

"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

[...]

"43. 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, assessments should be in accord with the guidelines adopted by the Conference of Parties to the Convention on Biological Diversity."

II. Drafting proposals based on the principles emerging from the case law of the European Court of Human Rights as reflected in the updated draft Manual on Human Rights and the Environment

Principles contained in the Manual, Section A
<p style="text-align: center;">Chapter I: Right to life, health and the environment</p> <p><i>Right to life</i></p> <p>a) The right to life is protected under Article 2 of the Convention. This Article does not solely concern deaths resulting 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.</p> <p>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.</p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> - 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 right to information concerning such activities. 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. <p>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.</p> <p>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.</p> <p>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 criminal offence or prosecuted.</p> <p>h) The requirements of Article 2 of the Convention go beyond the stage of the official investigation, where this has led to the institution of proceedings in the national courts: the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law.</p>

Prohibition of inhuman and degrading treatment

- i) The Convention does not explicitly include a right to a clean and healthy environment. Yet environment-related issues may be addressed, as seen above, in the context of Article 2, as well as under other provisions of the Convention. However, only few cases with environmental issues have been brought under Article 3 prohibiting torture and other inhuman and degrading treatment. Not all types of ill-treatment fall within the scope of Article 3, as a minimum level of severity is required. Thus, the Court must consider whether a causal link exists between the treatment and the negative impact on the individual and whether it has attained the severity threshold. An assessment of whether the threshold has been reached will depend on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.
- j) Article 3 does not solely concern an obligation to refrain from infliction of ill-treatment by agents of the State, but also imposes a positive obligation on States **to take specific action to protect individuals from the prohibited treatment, or to provide them with adequate standards of care.**
- k) Article 3 has been applied in the context of exposure to excessive smoke in prisons. Although there does not exist a general obligation at European level to protect inmates against passive smoking, the Court has nevertheless found that States have a positive obligation to **take measures to protect a prisoner from the harmful effects of passive smoking** where medical examinations and the advice of doctors indicate that this is necessary for health reasons.

Drafting proposals for a non-binding instrument:*[Environmental disasters and the right to life]*

11. Member States should take appropriate steps to protect the right to life from interference by public authorities as well as threats posed by other (private) persons or activities that are not directly connected with the State.⁷⁴

12. In order to safeguard the right to life, member States should put into place a legislative and administrative framework to prevent threats to life 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 particular emphasis on the public's right to information concerning such activities, and; providing for appropriate procedures for identifying shortcomings in the technical processes concerned and errors committed by those responsible.⁷⁵

⁷⁴ Council of Europe, updated draft 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. This Article does not solely concern deaths resulting 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.**"

⁷⁵ Council of Europe, updated draft 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 right to information concerning such activities.** In cases of natural disasters this includes the maintenance of an adequate defence and warning infrastructure;

13. 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 infringement of the right to life, provide for remedies.⁷⁶

[Unhealthy detention environment and the right to freedom from inhuman or degrading treatment]

14. Particularly in detention environments, States should protect individuals from prohibited treatment and provide them with adequate standards of healthcare. This includes measures to protect a prisoner from the harmful effects of passive smoking.⁷⁷

Principles contained in the Manual, Section A
<p>Chapter II: Respect for private and family life as well as the home and the environment</p> <p>a) The right to respect for private and family life and the home are protected under Article 8 of the Convention. This right implies respect for the quality of private life as well as the enjoyment of the amenities of one's home ("living space").</p> <p>b) Environmental degradation does not necessarily involve a violation of Article 8 as it does not include an express right to general environmental protection or nature conservation.</p> <p>c) For an issue to arise under Article 8, the environmental factors must have a directly harmful effect on 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.</p> <p>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, <i>inter alia</i>, 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.</p>

- providing for appropriate procedures for identifying shortcomings in the technical processes concerned and errors committed by those responsible.

⁷⁶ Council of Europe, updated draft 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 criminal offence or prosecuted."

⁷⁷ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter I, paras. (j), (k):

"(j) Article 3 does not solely concern an obligation to refrain from infliction of ill-treatment by agents of the State, but also imposes a positive obligation on States **to take specific action to protect individuals from the prohibited treatment, or to provide them with adequate standards of care.**"

"(k) Article 3 has been applied in the context of exposure to excessive smoke in prisons. Although there does not exist a general obligation at European level to protect inmates against passive smoking, the Court has nevertheless found that States have a positive obligation to **take measures to protect a prisoner from the harmful effects of passive smoking** where medical examinations and the advice of doctors indicate that this is necessary for health reasons."

- e) **Where decisions of public authorities affect the environment to the extent that there is an interference with the right to respect for private or family life or the home**, they must accord with the conditions set out in Article 8 paragraph 2. Such decisions must thus **be provided for by law and follow a legitimate aim**, such as the economic well-being of the country or the protection of the rights and freedoms of others. In addition, they must be **proportionate to the legitimate aim pursued**: for this purpose, **a fair balance must be struck between the interest of the individual and the interest of the community as a whole**. Since the social and technical aspects of environmental issues are often difficult to assess, the relevant public authorities are best placed to determine what might be the best policy. Therefore **they enjoy in principle a wide margin of appreciation in determining how the balance should be struck**. The Court may nevertheless assess whether the public authorities have approached the problem with due diligence and have taken all the competing interests into consideration.
- f) In addition, the Court has recognised the **preservation of the environment**, in particular in the framework of planning policies, **as a legitimate aim justifying certain restrictions by public authorities on a person's right to respect for private and family life and the home**.

Drafting proposals for a non-binding instrument:

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

15. Member States should ensure that environmental harm, stemming from State or non-state activities, does not have a harmful effect on, or seriously risks the enjoyment of, private and family life, home, and correspondence.⁷⁸

16. Where decisions of public authorities affect the environment to the extent that there is an interference with the right to respect for private and family life, member States should ensure that those decisions are prescribed by law, are necessary in a democratic society and pursue a legitimate aim, striking a balance between the interest of the individual and the general interest, as set out in the Convention. Member States enjoy a margin of appreciation in how this balance should be struck.⁷⁹

⁷⁸ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 20201), Section A, Chapter III, paras. (c), (d):

“(c) For an issue to arise under Article 8, the **environmental factors must have a directly harmful effect on 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.”

⁷⁹ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter III, para. (e):

“(e) **Where decisions of public authorities affect the environment to the extent that there is an interference with the right to respect for private or family life or the home**, they must accord with the conditions set out in Article 8 paragraph 2. Such decisions must thus **be provided for by law and follow a legitimate aim**, such as the economic well-being of the country or the protection of the rights and freedoms of others. In addition, **they must be proportionate to the legitimate aim pursued**: for this purpose, **a fair balance must be struck between the interest of the individual and the interest of the community as a whole**. Since the social and technical aspects of environmental issues are often difficult to assess, the relevant public authorities are best placed to determine what might be the best policy. Therefore **they enjoy in principle a wide margin of appreciation in determining how the balance should be struck**. The Court may nevertheless assess whether the public authorities have approached the problem with due diligence and have taken all the competing interests into consideration.”

17. Member States may use the preservation of the environment as a legitimate aim to justify certain restrictions by public authorities on a person's right to respect for private and family life and the home.⁸⁰

Principles contained in the Manual, Section A
<p>Chapter III: Protection of property and the environment</p> <p>a) Under 1 of Protocol No. 1 to the Convention, individuals are entitled to the peaceful enjoyment of their possessions, including protection from unlawful deprivation of property. This provision does not, in principle, guarantee the right to continue to enjoy those possessions in a pleasant environment. Article 1 of Protocol No. 1 also recognises that public authorities are entitled to control the use of property in accordance with the general interest. In this context the Court has found that the environment is an increasingly important consideration.</p> <p>b) The general interest in the protection of the environment can justify certain restrictions by public authorities on the individual right to the peaceful enjoyment of one's possessions. Such restrictions should be lawful and proportionate to the legitimate aim pursued. Public authorities enjoy a wide margin of appreciation in deciding with regard both to the choice of the means of enforcement and to the ascertaining whether the consequences of enforcement are justified in the general interest. However, the measures taken by public authorities must be proportionate and strike a fair balance between the interests involved, and here environmental preservation plays an increasingly important role.</p> <p>c) On the other hand, protection of the individual right to the peaceful enjoyment of one's possessions may require the public authorities to ensure certain environmental standards. The effective exercise of this right does not depend merely on the public authorities' duty not to interfere, but may require them to take positive measures 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 to a lesser extent in situations of natural disasters.</p>

Drafting proposals for a non-binding instrument:

[Environmental harm and the protection of property]

18. Member States may restrict the individual right to property if it infringes upon the general interest of the protection of the environment. Member States should ensure such restrictions are lawful and proportionate to the legitimate aim pursued, which falls within their margin of appreciation.⁸¹

19. Member States should ensure that environmental harm stemming from their activities does not infringe upon the enjoyment of the right to property. Additionally, protection of the individual right to the peaceful enjoyment of one's possessions may require the public authorities to ensure certain environmental standards.⁸²

⁸⁰ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter III, para. (f):

"(f) In addition, the Court has recognised the **preservation of the environment**, in particular in the framework of planning policies, **as a legitimate aim justifying certain restrictions by public authorities on a person's right to respect for private and family life and the home.**"

⁸¹ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter III, para. (b):

"(b) **The general interest in the protection of the environment can justify certain restrictions by public authorities on the individual right to the peaceful enjoyment of one's possessions. Such restrictions should be lawful and proportionate to the legitimate aim pursued. Public authorities enjoy a wide margin of appreciation in deciding** with regard both to the choice of the means of enforcement and to the ascertaining whether the consequences of enforcement are justified in the general interest. However, the measures taken by public authorities must be proportionate and strike a fair balance between the interests involved, and here environmental preservation plays an increasingly important role."

⁸² Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter III, para. (c):

Principles contained in the Manual, Section A

Chapter IV:
Information and communication on environmental matters*Right to receive and impart information and ideas on environmental matters*

- 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.**
- b) **Restrictions by public authorities on the right to receive and impart information and ideas under Article 10, including on environmental matters, must be prescribed by law and follow a legitimate aim. Measures interfering with this right must be proportionate to the legitimate aim pursued and a fair balance must therefore be struck between the interest of the individual and the interest of the community as a whole.**
- c) However freedom to receive information under Article 10 cannot be construed as imposing on public authorities a general obligation to collect and disseminate information relating to the environment of their own motion.

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

- 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 interests of the society as a whole.**

Access to information on environmental matters

- e) **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 2 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.**
- h) Moreover, the Court has established criteria on the construction of the procedures used to provide information. It held that **when 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**

"(c) On the other hand, **protection of the individual right to the peaceful enjoyment of one's possessions may require the public authorities to ensure certain environmental standards. The effective exercise of this right does not depend merely on the public authorities' duty not to interfere, but may require them to take positive measures 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 to a lesser extent in situations of natural disasters.**"

information. Moreover, if environmental and health impact assessments are carried out, the public needs to have access to those study results.

Additional drafting proposals for a non-binding instrument:

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

20. 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.⁸³ The right to freedom of expression includes freedom to hold opinions and to receive and impart information and ideas without interference by public authorities.⁸⁴ 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.⁸⁵

21. Restrictions by public authorities on the right to receive and impart information and ideas under Article 10, including on environmental matters, must be prescribed by law and follow a legitimate aim. Measures interfering with this right must be proportionate to the legitimate aim pursued and a fair balance must therefore be struck between the interest of the individual and the interest of the community as a whole.⁸⁶

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

22. 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.⁸⁷ The

⁸³ 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 at the 1081st meeting of the Ministers' Deputies), para. III (13):

"13. **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**, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity."

⁸⁴ Similar wording, in *Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the armed forces* (Adopted by the Committee of Ministers on 24 February 2010 at the 1077th meeting of the Ministers' Deputies), para. I (47):

"47. **The right to freedom of expression includes freedom to hold opinions and to receive and impart information and ideas.** The exercise of these freedoms by everyone, including members of the armed forces, carries with it duties and responsibilities. It may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority or impartiality of the judiciary. Such measures should be proportionate, should not be arbitrary and should be reasonably foreseeable."

⁸⁵ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter IV, para. (a):

"(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 journalists, and should not therefore attract 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)."

⁸⁶ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter IV, para. (b):

"(b) **Restrictions by public authorities on the right to receive and impart information and ideas under Article 10, including on environmental matters, must be prescribed by law and follow a legitimate aim. Measures interfering with this right must be proportionate to the legitimate aim pursued and a fair balance must therefore be struck between the interest of the individual and the interest of the community as a whole.**"

⁸⁷ 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):

"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

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 right⁸⁸ and includes the unobstructed peaceful assembly and association related to environmental matters.⁸⁹

23. 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 interests of the society as a whole.⁹⁰

[Access to information on environmental matters]

24. As part of the appropriate steps to safeguard the right to life and the right to private and family life, member States should to ensure a right of access to information in relation to environmental issues by adequately informing the public 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.⁹¹

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.”

⁸⁸ *Koretsky 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 aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions (see *Sidiropoulos and Others v. Greece*, judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, pp. 1614-15, § 40; *The United Macedonian Organisation Ilinden and Others v. Bulgaria*, no. 59491/00, § 57, 19 January 2006; *The Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 59, ECHR 2006-...; and *Ramazanov and Others v. Azerbaijan*, no. 44363/02, § 54, 1 February 2007).”

⁸⁹ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter V, para. (d):

“(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 interests of the society as a whole.”

⁹⁰ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter V, para. (d):

“(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 interests of the society as a whole.**”

Similar wording in *Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom* (Adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers' Deputies), para. 3.5:

“3.5 **Any restriction on the exercise of the right to freedom of peaceful assembly and right to freedom of association with regard to the Internet** is in compliance with Article 11 of the Convention, namely it:

- is **prescribed by a law**, which is accessible, clear, unambiguous and sufficiently precise to enable individuals to regulate their conduct;

- **pursues a legitimate aim** as exhaustively enumerated in Article 11 of the Convention;

- is **necessary in a democratic society and proportionate to the legitimate aim pursued**. There is a pressing social need for the restriction. **There is a fair balance between the exercise of the right to freedom of assembly and freedom of association and the interests of the society as a whole.** If a less intrusive measure achieves the same goal, it is applied. The restriction is narrowly construed and applied, and does not encroach on the essence of the right to freedom of assembly and association.”

⁹¹ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter V, paras. (e), (f), (g):

“(e) **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

(The CDDH-ENV members may consider whether appropriate to add here based on the Aarhus Convention)

[Member States should ensure that public authorities possess and update environmental information and ensure that environmental information available to the public is transparent and easily 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.^{92]}

that States are duty-bound based on Article 2 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. La Cour rappelle que des 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'à l'arrêt de la production de fertilisants en 1994, dans l'**attente d'informations essentielles qui leur auraient permis d'évaluer les risques pouvant résulter 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 des requérantes au respect de leur vie privée et familiale, au mépris de l'article 8 de la Convention.

Par conséquent, il y a eu violation de cette disposition.”

⁹² *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.

25. 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.⁹³

(The CDDH-ENV members may consider whether appropriate to add here based on international instruments)

[Member States should guarantee the right of everyone, without distinction on any ground, to have access, on request, to official documents held by public authorities[, bodies with public responsibilities for the environment, and specific information held by operators].⁹⁴ Member States shall 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.⁹⁵]

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.”

⁹³ Council of Europe, *updated draft 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 construction of the procedures used to provide information. It held that **when 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.”

⁹⁴ *Council of Europe Convention on Access to Official Documents* (2009), ETS No. 205, Art. 2(1):

“Article 2 – Right of access to official documents

1. Each Party shall guarantee the right of everyone, without discrimination on any ground, to have access, on request, to official documents held by public authorities.”

Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (21 June 1993), ETS No. 150, Arts. 14(1), 15, 16(1):

“Article 14 – Access to information held by public authorities

1. Any person shall, at his request and without his having to prove an interest, have access to information relating to the environment held by public authorities. The Parties shall define the practical arrangements under which such information is effectively made available.”

“Article 15 – Access to information held by bodies with public responsibilities for the environment

On the same terms and conditions as those set out in Article 14 any person shall have access to information relating to the environment held by bodies with public responsibilities for the environment and under the control of a public authority. Access shall be given via the competent public administration or directly by the bodies themselves.”

“Article 16 – Access to specific information held by operators

1. The person who suffered the damage may, at any time, request the court to order an operator to provide him with specific information, in so far as this is necessary to establish the existence of a claim for compensation under this Convention.”

⁹⁵ *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 form.”

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

Principles contained in the Manual, Section A

Chapter V:

Decision-making processes in environmental matters and public participation in them

- 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.**
- 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 conflicting interests at stake.** The Court has stressed the importance of public access to the conclusions of such studies and to information which would enable individuals **to assess the danger to which they are exposed.** However, this does not mean that decisions can be taken only if comprehensive and measurable data are available in relation to each and every aspect of the matter to be decided.

Drafting proposals for a non-binding instrument:*[Decision-making on environmental matters and public participation in them]*

26. When making decisions which relate to the environment, member States should take into account the effect it might have on the enjoyment of the rights laid down by the Convention, and should allow the public to make representations in relation to such decisions.⁹⁶

(The CDDH-ENV members may consider whether appropriate to add here based on international instruments)

[Member States should adopt specific strategies and targeted policies to ensure that every member of society has adequate opportunities to effectively participate decision-making processes related to environmental matters,⁹⁷ and ensure that the public participation is taken into account in the decision due.⁹⁸ This includes, *inter alia*, public participation in decisions on specific activities, public participation

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 on how to obtain environmental information.”

⁹⁶ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter VI, para. (a):

“(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.**”

⁹⁷ 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. 20, para. 49:

“**Member States should adopt specific strategies and targeted policies to ensure that every member of society has adequate opportunities to effectively participate** in public affairs and democratic **decision making**, which is an essential condition for social cohesion.”

⁹⁸ *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 ACTIVITIES

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

“Article 7 PUBLIC PARTICIPATION 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 environment.”

“Article 8 PUBLIC PARTICIPATION DURING 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

concerning plans, programmes and policies relating to the environment and, participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments.^{99]}

27. 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 the public to strike a fair balance between the various conflicting interests at stake and to assess the danger to which they are exposed.¹⁰⁰

Principles contained in the Manual, Section A
<p>Chapter VI: Access to justice and other remedies in environmental matters</p> <p>a) Several provisions of the Convention guarantee that individuals should be able to commence judicial or administrative proceedings in order to protect their rights. Article 6 guarantees the right to a fair trial, which the Court has found includes the right of access to a court. Article 13 guarantees to persons, who have an arguable claim that their rights and freedoms as set forth in the Convention have been violated, an effective remedy before a national authority. Moreover, the Court has inferred procedural requirements from certain provisions of the Convention, such as Articles 2 and 8 and Article 1 of Protocol 1. All these provisions may apply in cases where human rights and environmental issues are involved.</p> <p>b) The right of access to a court under Article 6 will as a rule come into play when a “civil right or obligation”, within the meaning of the Convention, is the subject of a “dispute”. This includes the right to see final and enforceable court decisions executed and implies that all parties, including public authorities, must respect court decisions.</p> <p>c) The right of access to a court guaranteed by Article 6 applies if there is a sufficiently direct link between the environmental problem at issue and the civil right invoked; mere tenuous connections or remote consequences are not sufficient. In case of a serious, specific and imminent environmental risk, Article 6 may be invoked if the danger reaches a degree of probability which makes the outcome of the proceedings directly decisive for the rights of those individuals concerned.</p> <p>d) Environmental associations which are entitled to bring proceedings in the national legal system to defend the interests of their members may invoke the right of access to a court when they seek to defend the economic interests of their members (e.g. their personal assets and lifestyle). However, they will not necessarily enjoy a right of access to a court when they are only defending a broad public interest.</p> <p>e) Where public authorities have to determine complex questions of 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.</p>

(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.**”

⁹⁹ *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)* (25 June 1998), Arts. 6, 7, 8:

“Article 6 **PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES**

[...].”

“Article 7 **PUBLIC PARTICIPATION CONCERNING PLANS, PROGRAMMES AND POLICIES RELATING TO THE ENVIRONMENT**

[...].”

“Article 8 **PUBLIC PARTICIPATION DURING THE PREPARATION OF EXECUTIVE REGULATIONS AND/OR GENERALLY APPLICABLE LEGALLY BINDING NORMATIVE INSTRUMENTS**

[...].”

¹⁰⁰ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter VI, para. (b):

“(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 conflicting interests at stake.** The Court has stressed the importance of public access to the conclusions of such studies and to information which would enable individuals **to assess the danger to which they are exposed.** However, this does not mean that decisions can be taken only if comprehensive and measurable data are available in relation to each and every aspect of the matter to be decided.”

- f) In addition to the right of access to a court as described above, Article 13 guarantees **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.**
- g) The protection afforded by Article 13 does not go so far as to require any particular form of remedy. The State has a margin of appreciation in determining how it gives effect to its obligations under this provision. The nature of the right at stake has implications for the type of remedy which the State is required to provide. Where for instance violations of the rights enshrined in Article 2 are alleged, compensation for economic and non-economic loss should in principle be possible as part of the range of redress available. However, neither Article 13 nor any other provision of the Convention guarantees an individual a right to secure the prosecution and conviction of those responsible.
- h) Environmental protection concerns may in addition to Articles 6 and 13 impact the interpretation of other procedural articles, such as Article 5 which sets out the rules for detention and arrest of person. The Court has found that in the case of offences against the environment, like the massive spilling of oil by ships, a strong legal interest of the public exist to prosecute those responsible. The Court recognised that maritime environmental protection law has evolved constantly. Hence, it is in the light of those “new realities” that the Convention articles need to be interpreted. Consequently, environmental damage can be of a degree that justifies arrest and detention, as well as imposition of substantial amount of bail.

Drafting proposals for a non-binding instrument:

[Environmental risks and access to court]

28. Member States should be mindful that the right to a fair trial includes the right to access to a court. Member States should ensure that applicants, in case of serious, specific and imminent environmental risks, may invoke Article 6 if the danger reaches a degree of probability which makes the outcome of the proceedings directly decisive for the rights and freedoms as set forth in the Convention or civil rights of the individuals concerned.¹⁰¹

29. Member States should enable applicants to appeal to a court once they consider that their rights and interests have not been given sufficient weight in the decision-making processes on environmental and economic policy.¹⁰²

(The CDDH-ENV members may consider whether appropriate to add here based on international instruments)

¹⁰¹ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter VII, paras. (a), (c):

“(a) Several provisions of the Convention guarantee that individuals should be able to commence judicial or administrative proceedings in order to protect their rights. Article 6 guarantees the right to a fair trial, which the Court has found includes the right of access to a court. Article 13 guarantees to persons, who have an arguable claim that their **rights and freedoms as set forth in the Convention** have been violated, an effective remedy before a national authority. Moreover, the Court has inferred procedural requirements from certain provisions of the Convention, such as Articles 2 and 8 and Article 1 of Protocol 1. All these provisions may apply in cases where human rights and environmental issues are involved.”

“(c) **The right of access to a court guaranteed by Article 6** applies if there is a sufficiently direct link between the environmental problem at issue and the civil right invoked; mere tenuous connections or remote consequences are not sufficient. **In case of a serious, specific and imminent environmental risk, Article 6 may be invoked if the danger reaches a degree of probability which makes the outcome of the proceedings directly decisive for the rights of those individuals concerned.**”

Taşkın and Others v. Turkey (Judgment) (3 November 2004), ECHR Application no. 46117/99, para. 130:

“130. The Court points out that, for Article 6 § 1 in its “civil” limb to be applicable, there must be a dispute (“*contestation*” in the French text) over a “civil right” which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be **genuine and serious**; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The **outcome of the proceedings must be directly decisive for the right in question**; tenuous connections or remote consequences are not sufficient to bring Article 6 § 1 into play (see, among many other examples, *Balmer-Schafroth and Others v. Switzerland*, judgment of 26 August 1997, *Reports* 1997-IV, p. 1357, § 32, and *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, § 43, ECHR 2000-IV).”

¹⁰² Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter VII, para. (e):

“(e) Where public authorities have to determine complex questions of **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.**”

[Member States should ensure that members of the public have 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.^{103]}

[Environmental harm and the right to a remedy]

30. 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,¹⁰⁴ *(The CDDH-ENV members may consider whether appropriate to add here based on international instruments)* [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.^{105]}

III. Drafting proposals based on principles emerging from conclusions and decisions of the European Committee of Social Rights as reflected in the Manual on Human Rights and the Environment

Principles contained in the Manual, Section B
<p>Chapter I: Right to just conditions of work, and to safe and healthy working conditions and the environment</p> <p>a) The right to just conditions of work is protected under Article 2 paragraph 4 of the Charter. In addition, Article 3 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.</p> <p>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 evidence that workers at risk are protected up to a level at least equivalent to that set by international reference standards.</p>

Drafting proposals for a non-binding instrument:

¹⁰³ *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.**"

¹⁰⁴ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section A, Chapter VII, para. (f):

"(f) In addition to the right of access to a court as described above, Article 13 guarantees **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.**"

¹⁰⁵ 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. 22, para. 63:

"Member States must ensure access to justice and effective remedies before national authorities in cases where human 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.**"

[Environmental pollution and the right to just conditions of work]

31. Particularly in dangerous industries, where health and safety risks, such as exposure to environmental pollution, cannot be eliminated, member States should, in addition to taking preventive and protective measures, provide for compensation.¹⁰⁶

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

32. Member States should effectively adopt, enforce and monitor legislation on safety and security at the workplace to ensure that workers are not 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.¹⁰⁷

Principles contained in the Manual, Section B

Chapter II:
Right to protection of health and the environment

- a) Article 11 on the right to protection of health has been interpreted by the Committee as including the right to a healthy environment. The Committee has noted the complementarity between the right to health under Article 11 of the Charter and Articles 2 and 3 of the European Convention on Human Rights – given that health care is a prerequisite for human dignity – as well as Article 8 of the Convention. As a consequence, the Committee has concluded on several State reports regarding **the right to health that measures required under Article 11, paragraph 1, should be designed to remove the causes of ill health resulting from environmental threats such as pollution (principle of prevention)**. Thus, not taking measures to avoid or reduce deterioration of the environment may amount to the infringement of specific social rights.
- b) The obligation of States to take measures to create a healthy environment is at the heart of the Charter's system of guarantees and may be relevant to the application of a variety of Charter provisions more specifically.

¹⁰⁶ *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits), ECSR Complaint No. 30/2005, para. 235:

"235. In this case, it considers **that the mining industry is still one of the particularly dangerous** industries in which workers' health 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.**"

¹⁰⁷ Council of Europe, *updated draft 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 Article 2 paragraph 4 of the Charter. In addition, Article 3 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 evidence that workers at risk are protected** up to a level at least equivalent to that set by international reference standards."

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

"223. The Committee notes that Article 3 of the Charter grants everyone the right to safe and healthy working conditions. It considers that this right stems directly from the right to personal integrity (Conclusions I, statement of interpretation of Article 3, p. 22).

224. States' first obligation under Article 3 is to ensure the right to safe and healthy working standards of the highest possible level. Paragraph 1 of this article **requires them to issue health and safety regulations providing for preventive and protective measures against most of the risks** recognised by the scientific community and laid down in Community and international regulations and standards (Conclusions XIV-2, statement of interpretation of Article 3, pp. 36-37).

[...]

228. Based on the lack of effective supervision of health and safety regulations, the Committee recalls that the compliance with the Charter "cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised" (*International Commission of Jurists v. Portugal*, decision cited above, §33). **The enforcement of health and safety regulations** required by Article 3§2 is therefore essential if the right embodied in Article 3 is to be effective."

[...]

231. The Committee considers that in the areas such as the right to safety and health at work, which are so intimately linked with the physical integrity of individuals, **the state has a duty to 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**. In the present case, the Committee considers that Greece has failed to honour its obligation to effectively monitor the enforcement of regulations on health and safety at work particularly as the Government recognises the lack of inspectors and is unable to supply precise data on the number of accidents in the mining sector."

- c) **States are under an obligation to apply the precautionary principle when there are reasonable grounds to believe that there is a risk of serious damage to human health.**
- d) **States must make it a public health priority to publicly disseminate information about environmental harm through awareness-raising campaigns and education.**
- e) States are responsible for activities which are harmful to the environment whether they are carried out by the public authorities themselves or by a private company.
- f) Overcoming pollution is an objective that can only be achieved gradually. Nevertheless, States must strive to attain this objective within a reasonable time, by showing measurable progress and making best possible use of the resources at their disposal. The measures taken by States with a view to overcoming pollution are assessed with reference in light of States' national legislation efforts and agreements entered into with regard to the European Union and the United Nations, and the actual application thereof in practice.
- g) **In order to combat air pollution, in light of the right to a healthy environment, States are required to implement an appropriate strategy which should include the following measures:**
 - **develop and regularly update sufficiently comprehensive environmental legislation and regulations;**
 - **take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level and to help to reduce it on a global scale;**
 - **ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery;**
 - **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.**
- h) **States must take preventive and protective measures to ensure access to safe drinking water.**
- i) **States must take measures to guarantee food safety in order to eliminate the threat posed by food-borne diseases and the outbreaks of such diseases.**
- j) **States must adopt regulations and legal rules on the prevention and reduction of noise pollution.**
- k) **States are required to protect their population against the consequences of nuclear accidents taking place abroad and having an effect within their territory.** Additionally, where the State receives (part of) its energy source from **nuclear power plants, it is under the obligation to prevent related hazards for the communities living in the potential risk areas.**
- l) Under Article 11 States must apply a policy which **bans the use, production and sale of asbestos and products containing it.**
- m) **States are under an obligation to ensure equal access to the protection of health and adopt protective measures to ensure that environmental pollution does not stem from or contribute to discrimination,** in line with Article E of the Revised Charter and the Preamble of the 1961 Charter. The Committee recalls that Article 11 of the Charter imposes a range of positive obligations to ensure an effective exercise of the right to health, and the Committee assesses compliance with this provision paying particular attention to the situation of disadvantaged and vulnerable groups.

Drafting proposals for a non-binding instrument:

[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.¹⁰⁸

¹⁰⁸ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section B, Chapter II, para (a):

"a) Article 11 on the right to protection of health has been interpreted by the Committee as including the right to a healthy environment. The Committee has noted the complementarity between the right to health under Article 11 of the Charter and Articles 2 and 3 of the European Convention on Human Rights – given that health care is a prerequisite for human dignity – as well as Article 8 of the Convention. As a consequence, the Committee has concluded on several State reports regarding the

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.¹⁰⁹

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, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level and to help to reduce it on a global scale; ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery; 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; take measures to guarantee food safety; adopt regulations and legal rules on the prevention and reduction of noise pollution; 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.¹¹⁰

right to health that measures required under Article 11, paragraph 1, should be designed to remove the causes of ill health resulting from environmental threats such as pollution (principle of prevention). Thus, not taking measures to avoid or reduce deterioration of the environment may amount to the infringement of specific social rights.”

¹⁰⁹ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2020), Section B, Chapter II, para (c):

“(c) **States are under an obligation to apply the precautionary principle when there are reasonable grounds to believe that there is a risk of serious damage to human health.**”

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

“145. The Committee also considers that according to Art 11§3 of the Charter, the Greek Government has to undertake appropriate measures to prevent as far as possible activities which are detrimental to human health (diseases and accidents). The Committee is of the view that **where there are threats of serious damage to human health, lack of full scientific certainty should not be used as a reason for postponing appropriate measures.**

[...]

150. As far as the implementation of the right to protection of health is concerned, the Committee considers that, when a preliminary scientific evaluation indicates that there are reasonable grounds for concern regarding potentially dangerous effects on human health, **the State must take precautionary measures** consistent with the high level of protection established by Article 11. Where required, these measures must be taken in accordance to relevant decisions adopted by national jurisdictions.”

¹¹⁰ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section B, Chapter II, paras. (d), (f), (g), (h), (i), (j), (k):

“(d) States must make it a public health priority to **publicly disseminate information about environmental harm through awareness-raising campaigns and education.**

(f) In order to combat air pollution, **in light of the right to a healthy environment, States are required to implement an appropriate strategy which should include the following measures:**

- **develop and regularly update sufficiently comprehensive environmental legislation and regulations;**
- **take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level and to help to reduce it on a global scale;**
- **ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery;**
- **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.**

(g) States must **take preventive and protective measures to ensure access to safe drinking water.**

(h) States must **take measures to guarantee food safety in order to eliminate the threat posed by food-borne diseases and the outbreaks of such diseases.**

(i) States must **adopt regulations and legal rules on the prevention and reduction of noise pollution.**

(j) States are required to **protect their population against the consequences of nuclear accidents taking place abroad and having an effect within their territory.** Additionally, where the State receives (part of) its energy source **from nuclear power plants, it is under the obligation to prevent related hazards for the communities living in the potential risk areas.**

(k) Under Article 11 States must apply a policy which **bans the use, production and sale of asbestos and products containing it.”**

Marangopoulos Foundation for Human Rights (MFHR) v. Greece (Decision on the Merits), ECSR Complaint No. 30/2005, para. 203:

“203. In order to fulfil their obligations, national authorities must therefore:

–**develop and regularly update sufficiently comprehensive environmental legislation and regulations** (Conclusions XV-2, Addendum, Slovakia, pp. 201-205);

–**take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level and to help to reduce it on a global scale** (Conclusions 2005, Moldova, Article 11§3, pp. 452-457);

–**ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery** (see, *mutatis mutandis*, International Commission of Jurists v. Portugal, aforementioned decision, § 33);

36. In light of non-discrimination, member States are should ensure equal access to the protection of health and adopt prevention policies and protective measures to ensure that environmental pollution does not stem from or contribute to discrimination. Member States should address the specific problems faced by affected communities, disadvantaged and/or vulnerable groups, to ensure they do not live in unhealthy environments.¹¹¹

Principles contained in the Manual, Section B

Chapter III:

Right to housing and the environment

- a) The Committee has recalled that the right to housing under Article 31, Part I, of the Revised Charter, in conjunction with Article E on **non-discrimination**, includes the obligation of **States to adopt measures to combat any forms of segregation on racial grounds in environmentally hazardous areas. States are required to assist disadvantaged and vulnerable groups in improving their living conditions and the environment, and to ensure housing in ecologically healthy surroundings.**

Drafting proposals for a non-binding instrument:

[Right to housing and the environment]

37. In light of non-discrimination, member States should take measures to prevent segregation on racial grounds in environmentally hazardous areas, assist in improving living conditions and the environment, and ensure that housing is located in ecologically healthy surroundings.¹¹²

–**inform and educate the public, including pupils and students at school, about both general and local environmental problems** (Conclusions 2005, Moldova, Article 11§2, pp. 450–452);

–**assess health risks through epidemiological monitoring of the groups concerned.**”

¹¹¹ Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section B, Chapter II, para. (m):

“(m) States are under an obligation to ensure equal access to the protection of health and **adopt protective measures to ensure that environmental pollution does not stem from or contribute to discrimination**, in line with Article E of the Revised Charter and the Preamble of the 1961 Charter. The Committee recalls that Article 11 of the Charter imposes a range of positive obligations to ensure an effective exercise of the right to health, and the Committee assesses compliance with this provision paying particular attention to the situation of disadvantaged and vulnerable groups.”

European Roma Rights Centre (ERRC) v. Bulgaria (Decision on the Merits) (3 December 2008), ESCR Complaint no. 46/2007, paras. 47, 49:

“47. The Committee considers there is sufficient evidence which shows that Roma communities **do not live in healthy environments**. This situation can in part be attributed to the failure of **prevention policies by the State**, for instance the lack of **protective measures** to guarantee clean water in Romani neighbourhoods, as well as the inadequacy of measures to ensure public health standards in housing in such neighbourhoods (see *European Roma Rights Centre v. Bulgaria*, Complaint No. 31/2005, decision on the merits of 18 October 2006).

49. The Committee also notes from various studies referred to by the ERRC in the complaint that the health status of Roma is inferior to that of the general population. The Government acknowledges in its submissions that the health condition of Roma is poor, and refers to the adoption of a “Health Strategy Concerning People in Disadvantaged Position Belonging to Ethnic Minorities” with a view to improving their health condition. The Committee nevertheless considers that the State has failed to meet its positive obligations **to ensure that Roma enjoy an adequate access to health care**, in particular by failing to take reasonable steps to address the specific problems faced by Roma communities stemming from their often **unhealthy living conditions** and difficult access to health services.”

Médecins du Monde - International v. France (Decision on the Merits) (11 September 2012), ESCR Complaint No. 67/2011, para. 144:

“144. The Committee considers that the state has failed to meet its positive obligation to ensure that migrant Roma, whatever their residence status, including children, **enjoy an adequate access to health care, in particular by failing to take reasonable steps to address the specific problems faced by Roma communities stemming from their often unhealthy living conditions and difficult access to health services.**”

¹¹² Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Section B, Chapter III, para. (a):

“(a) The Committee has recalled that the right to housing under Article 31, Part I, of the Revised Charter, in conjunction with Article E on non-discrimination, includes the obligation of States to adopt measures to combat any forms of segregation on racial grounds in environmentally hazardous areas. States are required to assist disadvantaged and vulnerable groups in improving their living conditions and the environment, and to ensure housing in ecologically healthy surroundings.”

Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe (Adopted by the Committee of Ministers on 23 February 2005 at the 916th meeting of the Ministers’

IV. Education and awareness

Principles contained in the Manual
<p>Appendix VI:</p> <p>Good Practices aimed at protecting the environment and respecting the obligations stemming from the European Convention on Human Rights and the European Social Charter</p> <p>[...]</p> <p>6. Providing education on environmental sustainability</p> <p>[#.] 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.</p> <p>[...]</p>

Drafting proposals for a non-binding instrument:

[Environmental education]

38. Member States should include environmental education, as a part of education promoting sustainable development (ESD), in the curricula at primary and secondary school levels as a key to,¹¹³ *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

Deputies), paras. 21, 34, 48 (see also: *Médecins du Monde - International v. France* (Decision on the Merits) (11 September 2012), ESCR Complaint No. 67/2011, para. 21):

"21. Member states should take measures to **combat any forms of segregation on racial grounds in environmentally hazardous areas**. This includes investing in the development of safe locations and taking steps to ensure that Roma communities have practical and affordable housing alternatives, so as to discourage settlements in, near or on hazardous areas.

[...]

34. [...] Roma who are permanently and legally settled in derelict or unhealthy surroundings should receive assistance in order to **improve the sanitary conditions of their homes** (help for repairs, assistance in improving their living conditions and environment, measures to allow them better access to short-term loans for acquiring better housing, mediation in their relations with administrations or public services)."

[...]

48. Member states, through their relevant authorities, should ensure that Roma housing is located in areas that are fit for habitation or suitable for construction under current legislation, and in **ecologically healthy surroundings**. Moreover, they should adopt measures that would enable Roma communities to react to unexpected events, such as natural disasters or epidemics, which often disproportionately affect **vulnerable groups** living in precarious settlements. The existing settlements which cannot be removed from unsuitable locations should be improved by appropriate and constructive environmental measures."

¹¹³ Similar wording in *Recommendation CM/Rec(2010)7 of the Committee of Ministers to member states on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education (Adopted by the Committee of Ministers on 11 May 2010 at the 120th Session)*, para. III(6):

"**Member states should include education** for democratic citizenship and human rights education **in the curricula for** formal education at pre-primary, **primary and secondary school level** as well as in general and vocational education and training. Member states should also continue to support, review and update education for democratic citizenship and human rights education in these curricula in order to ensure their relevance and encourage the sustainability of this area.

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. 24, para. 73:

"73. Member States should adopt practical measures to promote **education as a key** to combating intolerance, breaking down stereotypes, developing intercultural dialogue, including its religious dimension, building trust and mutual respect and promoting sincere support for the shared values of living together."

sustainable use of biological diversity, understand the causes and effects of climate change and desertification, and strengthen capacity to respond to environmental challenges.¹¹⁴

[Public awareness on environmental matters]

39. Increasing the public awareness of environmental matters should continue into adulthood, and member States should design, implement and promote regular national awareness-raising initiatives at all levels and through diverse forms of media. These initiatives should aim to increase awareness and understanding 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 (e.g., through conservation, sustainable use, risk preparedness), and of the harm they generate for individuals and society.¹¹⁵

¹¹⁴ *Convention on the Rights of the Child* (20 November 1989), 1577 UNTS 3, Art. 29(1)(e):

"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.**"

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:

"Article 13. Public Education and Awareness

The Contracting Parties shall:

(a) **Promote and encourage understanding of the importance of and the measures required for, the conservation of biological diversity**, as well as its propagation through media, and the inclusion of these topics in educational programmes; and
(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 19 Capacity-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 this Convention. [...]"

UN General Assembly, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', Annex with 'Framework Principles on Human Rights and the Environment' (24 January 2018) UN Doc. A/HRC/37/59, 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 humans and nature**, help them to appreciate and enjoy the natural world **and strengthen their capacity to respond to environmental challenges.**"

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

"Appendix VI: Good Practices aimed at protecting the environment and respecting the obligations stemming from 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."

¹¹⁵ UN General Assembly, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', Annex with 'Framework Principles on Human Rights and the Environment' (24 January 2018) UN Doc. A/HRC/37/59, 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

V. Other actors

Drafting proposals for a non-binding instrument:

[Civil society]

40. Member States are encouraged, as far as possible, to enable non-governmental organisations (NGOs) and/or representatives of civil society promoting environmental protection and meeting any requirements under national law, to participate in the decision-making process.¹¹⁶ They are encouraged

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 environmental situation of particular populations.”

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.B.4. **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 women’s rights). **These initiatives should aim to increase awareness and understanding among the general population**, especially parents, **of different forms of sexism**, including phenomena such as “mansplaining”, **of how to prevent and respond to them, 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 19 Capacity-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 this Convention. [...]”

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

“Appendix VI: Good Practices aimed at protecting the environment and respecting the obligations stemming from 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.”

¹¹⁶ 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. 20, para. 50:

“50. **Member States are encouraged, as far as possible, to enable** all relevant segments of society, **including non-governmental organisations**, to participate in the preparation and consideration of legislation so as to ensure inclusivity and the genuine recognition of the diversity within societies.”

Similar wording in *Guidelines for civil participation in political decision making* (Adopted by the Committee of Ministers on 27 September 2017 at the 1295th meeting of the Ministers’ Deputies), Chapter IV, paras. 5,6:

“IV. Fundamentals of civil participation in political decision-making

5. Civil participation should seek to provide, collect and channel views of individuals, directly or via **NGOs and/or representatives of civil society**, providing a substantive exchange of information and opinions which inform **the decision-making process** so that public needs are met.”

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

“Article 2 DEFINITIONS

to make consultation and collaboration with NGOs and civil society a common practice when drafting legislation, policies and action plans at national, regional and local levels, with a view to protecting and promoting human rights and the environment.¹¹⁷

[Non-State actors and subnational entities]

41. Member States should take the necessary measures to encourage the implementation of this non-binding instrument (e.g., Recommendation or guidelines) by non-State actors and subnational entities, including National Human Rights Institutions and civil society, economic actors, cities and regions taking into account their vital role in the protection of the environment.¹¹⁸

[Business and human rights related to the environment]

42. Member States should regulate the private industry to ensure compliance with its human rights obligations related to the environment.¹¹⁹ In particular, member States should regulate business enterprises to protect against human rights abuses resulting from environmental harm,¹²⁰ *inter alia*, by applying such measures as may be necessary to require business enterprises domiciled or operating in their territorial jurisdiction to respect human rights throughout their operations.¹²¹

For the purposes of this Convention,

5. "The public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making,- for the purposes of this definition, **non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest."**

¹¹⁷ 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. 23, para. 68:

"68. Member States should take concrete measures to create an environment conducive to the development of civil society, including defenders of human rights, and **make consultation and collaboration with civil society a common practice when drafting policies and action plans at national, regional and local levels, with a view to protecting and promoting human rights** in culturally diverse societies."

¹¹⁸ Les Club des Juristes, Draft Project "Global Pact for 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."**

¹¹⁹ *Hatton and Others v. the United Kingdom* (Judgment) (8 July 2003), ECHR Application no. 36022/97, para. 119:

"119. It is clear that in the present case the noise disturbances complained of were not caused by the State or by State organs, but that they emanated from the activities of private operators. It may be argued that the changes brought about by the 1993 Scheme are to be seen as a direct interference by the State with the Article 8 rights of the persons concerned. **On the other hand, the State's responsibility in environmental cases may also arise from a failure to regulate private industry in a manner securing proper respect for the rights enshrined in Article 8 of the Convention.** As noted above (see paragraph 98), broadly similar principles apply whether a case is analysed in terms of a positive duty on the State or in terms of an interference by a public authority with Article 8 rights to be justified in accordance with paragraph 2 of this provision. The Court is not therefore required to decide whether the present case falls into the one category or the other. The question is whether, in the implementation of the 1993 policy on night flights at Heathrow Airport, a fair balance was struck between the competing interests of the individuals affected by the night noise and the community as a whole."

Marangopoulos Foundation for Human Rights (MFHR) v. Greece (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005, para. 192:

"Regarding the first point – whether the matters complained of can be imputed to the state – the Committee notes that the DEH, which until its partial privatisation in 2001 was solely answerable to the Greek state, has private law status. However, **as a signatory to the Charter, Greece is required to ensure compliance with its undertakings, irrespective of the legal status of the economic agents whose conduct is at issue.** Moreover, the DEH's activities are clearly subject to the general legislation on the **environment** and under Act 2773/1999 on the liberalisation of the Greek electricity market, the Greek Government is required to supervise those activities. Finally, the state still holds a majority of the DEH's shares (51.12% in 2005)."

¹²⁰ UN General Assembly, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (24 January 2018) UN Doc. A/HRC/37/59, p. 12, para. 22 and p. 15:

"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. States should implement training programmes for law enforcement and judicial officers to enable them to understand and enforce environmental laws, and they should take effective steps to prevent corruption from undermining the implementation and enforcement of environmental laws."

¹²¹ 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 1249th meeting of the Ministers' Deputies), para. 13:

"13. Member States should:

43. Member States should apply such measures as may be necessary to encourage or, where appropriate, require that business enterprises domiciled or conducting substantial activities within their jurisdiction apply human rights due diligence throughout their operations and activities,¹²² 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.¹²³

44. 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 as a result of environmental harm, an effective remedy before a national authority, including where such violation arises from business activity.¹²⁴

– **apply such measures as may be necessary to require business enterprises operating within their territorial jurisdiction to respect human rights;**

– **apply such measures as may be necessary to require, as appropriate, business enterprises domiciled in their jurisdiction to respect human rights throughout their operations abroad;**

– encourage and support these business enterprises by other means so that they respect human rights throughout their operations.”

¹²² 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 1249th meeting of the Ministers' Deputies)*, para. 20:

Member States should apply such measures as may be necessary to encourage or, where appropriate, require that:

– **business enterprises domiciled within their jurisdiction apply human rights due diligence throughout their operations;**

– **business enterprises conducting substantial activities within their jurisdiction carry out human rights due diligence in respect of such activities;**

UN World Summit on Sustainable Development, *Johannesburg Declaration on Sustainable Development* (4 September 2002)

UN Doc. A/CONF.199/20, paras. 27, 29:

“27. We agree that in pursuit of its legitimate activities the private sector, including both large and small companies, has a duty to contribute to the evolution of equitable and sustainable communities and societies.

[...]

29. We agree that there is a need for **private sector corporations to enforce corporate accountability**, which should take place within a transparent and stable regulatory environment.”

¹²³ UN General Assembly, ‘Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’, Annex with ‘Framework Principles on Human Rights and the Environment’, (24 January 2018) UN Doc. A/HRC/37/59, p. 12, para. 22 and p. 15:

“Framework principle 12

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

Commentary

[...]

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.”

Office of the High Commissioner for Human Rights, ‘Guiding Principles for Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (2011), Principle 18, download available at: <<https://www.unglobalcompact.org/library/2>>

“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.”

¹²⁴ 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 1249th meeting of the Ministers' Deputies)*, para. 31:

“31. 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 General Assembly, ‘Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Annex with ‘Framework Principles on Human Rights and the Environment’, (24 January 2018) UN Doc. A/HRC/37/59, p. 12, para. 22 and p. 15:

[Alternative: *Member States should, as part of providing protection against business-related human rights abuse resulting from environmental harm, 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.*^{125]}

45. Member States should adopt appropriate measures as may be necessary to enable them to impose criminal or administrative sanctions or measures on legal persons on whose behalf an environmental violation has been committed, either intentionally or negligently, by their organs or members thereof or by any other representative.¹²⁶

Principles contained in the Manual

Appendix VI:

Good Practices aimed at protecting the environment and respecting the obligations stemming from the European Convention on Human Rights and the European Social Charter

“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**. States should implement training programmes for law enforcement and judicial officers to enable them to understand and enforce environmental laws, and they should take effective steps to prevent corruption from undermining the implementation and enforcement of environmental laws.”

Office of the High Commissioner for Human Rights, ‘Guiding Principles for Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (2011), Principle 25, download available at: <https://www.unglobalcompact.org/library/2>;

“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.**”

¹²⁵ Office of the High Commissioner for Human Rights, ‘Guiding Principles for Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (2011), Principle 25, download available at: <https://www.unglobalcompact.org/library/2>;

“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.**”

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 1249th meeting of the Ministers’ Deputies*), para. 31:

“31. **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 General Assembly, ‘Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’, Annex with ‘Framework Principles on Human Rights and the Environment’, (24 January 2018) UN Doc. A/HRC/37/59, p. 12, para. 22 and p. 15:

“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**. States should implement training programmes for law enforcement and judicial officers to enable them to understand and enforce environmental laws, and they should take effective steps to prevent corruption from undermining the implementation and enforcement of environmental laws.”

¹²⁶ *Convention on the Protection of Environment through Criminal Law* (1998), ETS No. 172, Preamble, Art. 9:

“Recalling that **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.

[...]

[...]

7. Protecting environmental activists and whistle-blowers

[#.] Environmental activists (e.g., NGOs, civic movements, journalists and individuals) are human right defenders (HRDs). They benefit from the same protection mechanisms as other HRDs. As all individuals should feel safe to freely raise public interest concerns, environmental HRDs should, similarly, be able to rely on an enabling environment to pursue their work on environmental issues.

[...]

[Protection of environmental human rights defenders]

46. Member States should 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. Member States 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.¹²⁷

VI. Other measures

Drafting proposals for a non-binding instrument:

[Participation and inclusion of youth in environmental matters]

47. 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[; provide them with the opportunity to present their perspectives on government decisions, and; create opportunities for intergenerational dialogue in order to encourage mutual respect and co-operation]. They should also encourage and

¹²⁷ 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 General Assembly, 'Report of the Special Rapporteur on the situation of human rights defenders' (3 August 2016), UN Doc. A/71/281, para. 3:

"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 facing environmental human rights defenders."

support initiatives by young people which promote sustainable development and environmental protection.¹²⁸

[Restorative sanctions]

48. 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.¹²⁹

[Broadened locus standi before national courts]

49. 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.¹³⁰

[Protection of indigenous communities and their environment]

50. Member States should ensure the protection of indigenous people and traditional 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.¹³¹

¹²⁸ 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. 21, para. 59:

"Participation and inclusion of youth

59. **Member States should adopt policies or measures designed to promote youth participation in society, including the participation of young people belonging to vulnerable and minority groups. They should ensure a democratic and cultural environment of respect for young people and take into account their diverse needs, circumstances and aspirations. They should also encourage and support initiatives by young people which promote mutual respect, dialogue, inclusion and responsibility for others in culturally diverse societies.**"

Similar wording in *Recommendation Rec(2004)13 of the Committee of Ministers to member states on the participation of young people in local and regional life* (Adopted by the Committee of Ministers on 17 November 2004, at the 904th meeting of the Ministers' Deputies), para. I.10(30):

"30. **Aware 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**, local and regional authorities should **support activities and projects which promote sustainable development and environmental protection** and which involve young people and their organisations."

Similar wording in *Recommendation CM/Rec(2012)2 of the Committee of Ministers to member States on the participation of children and young people under the age of 18* (Adopted by the Committee of Ministers on 28 March 2012 at the 1138th meeting of the Ministers' Deputies):

"**create opportunities for intergenerational dialogue in order to encourage mutual respect and co-operation;**"

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

"Chapter 25 CHILDREN AND YOUTH IN SUSTAINABLE DEVELOPMENT

25.4. Each country should, in consultation with its youth communities, establish a process to promote dialogue between the youth community and Government at all levels and to establish mechanisms that permit youth access to information **and provide them with the opportunity to present their perspectives on government decisions**, including the implementation of Agenda 21."

¹²⁹ *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

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 such measures."

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**."

¹³⁰ *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."

¹³¹ 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

51. Member States should take measures to 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.¹³²

[Development of national environmental policies and actions]

52. [The primary responsibility for protecting the environment and human rights rests with member States.¹³³] Member States should consider encouraging public authorities, including at local level, to adopt a strategic approach towards the human rights challenges faced due to the degradation of the environment by integrating the relevant issues into related action plans adopted at national level.¹³⁴

53. In developing their legislations, policies, strategies and actions, Member States could build upon and implement the existing legal instruments, principles and activities of the Council of Europe.¹³⁵

54. 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. In particular, National Action Plans under the UN Guiding Principles on Business and Human Rights could set up suitable structures, mechanisms and processes to ensure responsible business conduct in respect of both human rights and environment.¹³⁶

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."

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 land tenure systems of the indigenous peoples concerned."

¹³² *Convention on Biological Diversity* (5 June 1992), 1760 UNTS 69, Art. 8(j):

"Article 8. In-situ 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.**"

¹³³ 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), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 3 February 2021:

"Development of National Policies and Actions

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

¹³⁴ 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. 25, para. 78:

"Member States should consider encouraging public authorities, including at local and regional level, to adopt a strategic approach towards the human rights challenges of culturally diverse societies by integrating the relevant issues into the related action plans adopted at national level."

¹³⁵ 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), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 3 February 2021:

"Development of National Policies and Actions

[...]

In developing their legislations, policies, strategies and actions, Member States could build upon and implement the afore-mentioned legal instruments and activities of the Council of Europe."

¹³⁶ 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

55. Member States should consider monitoring 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.¹³⁷

[Coordination among member States related to environmental matters]

56. Effective coordination should be developed so that Member States of the Council of Europe have greater collective impact in international fora where environmental issues are addressed, building upon the Council of Europe's approach and added value.¹³⁸

57. The member States could consider a common approach to contributing to the UN 2030 Agenda for Sustainable Development, starting with good health and well-being (Goal 3). Greater collective action at the European level would set a global precedent and reduce the foreseeable risk of irreparable harm to the human rights of future generations.¹³⁹

February 2020), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 3 February 2021:

"Development of National Policies and Actions

[...]

The attainment of a sustainable future is impossible without collaborative and inclusive working relationships of diverse actors including corporations, civil society, human rights defenders and independent human rights bodies. **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. In particular, National Action Plans under the UN Guiding Principles on Business and Human Rights could set up suitable structures, mechanisms and processes to ensure responsible business conduct in respect of both human rights and environment."**

¹³⁷ 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. 25, para. 79:

"Member States should consider monitoring the impact of the measures taken, for instance by developing, where appropriate, human rights indicators to measure their impact in the context of culturally diverse societies. Adequate systems should be established to monitor the provision of health care, education or social services and social aid."

¹³⁸ 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), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 3 February 2021:

"Political Coordination among Member States

Effective coordination should be developed so that Member States of the Council of Europe have greater collective impact in international fora where environmental issues are addressed, building upon the Council of Europe's approach and added value."

¹³⁹ 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), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 3 February 2021:

"Political Coordination among Member States

[...]

As a first step, the Organisation could consider a common approach to contributing to the UN 2030 Agenda for Sustainable Development, starting with good health and well-being (Goal 3). Greater collective action at the European level would set a global precedent and reduce the foreseeable risk of irreparable harm to the human rights of future generations."