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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

**[DRAFT] CDDH report
on the need for and feasibility of a further instrument
or instruments on human rights and the environment**

I. Introduction

1. The present report has been prepared pursuant to the Committee of Ministers' invitation to the CDDH, "in the context of its ongoing work on human rights and the environment, to consider the need for and feasibility of a further instrument or instruments, bearing in mind [Recommendation 2211 \(2021\)](#)" of the Parliamentary Assembly on "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe".¹

2. The CDDH recalls that the Council of Europe has a long history of activity relating to the environment, including the connections between the environment and human rights.

3. As regards protection of the environment, the Council of Europe has adopted a number of specific conventions and agreements. These include the following:

- 1968 European Agreement on the Restriction of the Use of certain Detergents in Washing and Cleaning Products (ETS No. 064), which aims to ensure the control of fresh water not only from the standpoint of human needs but also to ensure the protection of nature in general. 10 member States have ratified this agreement, most recently Luxembourg in 1980.
- 1968 European Convention for the Protection of Animals during International Transport (ETS No. 065), which sets compulsory norms for space, ventilation and hygiene, transportation means, food and water, loading and unloading of animals and veterinary assistance. 13 member States have ratified this convention, most recently Türkiye in 2019.
- 1976 European Convention for the Protection of Animals kept for Farming Purposes (ETS No. 087), which aims to avoid unnecessary suffering or injury to such animals, having regard to the condition of housing, food or administered care. 33 member States have ratified this convention, most recently Türkiye in 2018, along with the EU.
- 1992 Protocol to the European Convention for the Protection of Animals kept for Farming Purposes (ETS No. 145), which extends the Convention's scope to apply also to certain aspects of developments in the area of animal husbandry and to the killing of animals in the farm. 18 member States have ratified this protocol, most recently the Netherlands in 2007. It has not yet entered into force, as not all Parties to the convention have ratified it.
- 1979 European Convention for the Protection of Animals for Slaughter (ETS No. 102), which aims to harmonise methods of slaughter in Europe and make them more humane. 26 member States have ratified this convention, most recently Hungary in 2021.
- 1979 Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention, ETS No. 104), which aims to ensure conservation of wild flora and fauna and their habitats, with special attention to endangered and vulnerable species. 45 member States have ratified this convention, along with 5 non-member States and the EU.²
- 1983 Protocol amending the European Agreement on the Restriction of the Use of certain Detergents in Washing and Cleaning Products (ETS No. 115), which aims to accommodate scientific and international developments since 1968, notably to take account of two European Community Directives. 5 member States have ratified this protocol, most recently Luxembourg in 1988.
- 1986 European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes (ETS No. 123), which aims primarily to reduce both the

¹ See doc. CM/Del/Dec(2021)1416/3.1, 3 November 2021.

² In 2001, the Council of Europe and the European Environmental Agency concluded a memorandum of co-operation on areas of activity falling within the scope of the Bern Convention. A revised version of this memorandum was adopted by the Committee of Ministers in 2018.

number of experiments and the number of animals used for such purposes. It has been ratified by 22 member States, most recently Hungary in 2021, along with the EU.

- 1987 European Convention for the Protection of Pet Animals (ETS No. 125). This convention aims essentially at assuring the welfare of animals, and in particular, of pet animals kept for private enjoyment and companionship. 26 member States have ratified this convention, most recently the Netherlands in 2022.
- The EUR-OPA Major Hazards Agreement, which was established in 1987 by a resolution of the Committee of Ministers.³
- 1993 Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (ETS No. 150), which aims at ensuring adequate compensation for damage resulting from activities dangerous to the environment and also provides for means of prevention and reinstatement. It considers that the problems of adequate compensation for emissions released in one country causing damage in another country are also of an international nature. This convention has not entered into force: no member State has ratified it, although 9 have signed it.
- 1998 Convention on the Protection of the Environment through Criminal Law (ETS No. 172). This convention is aimed at improving the protection of the environment at European level using the solution of last-resort – criminal law – in order to deter and prevent conduct which is most harmful to the environment. This convention has not entered into force: only one member State has ratified it, although 13 have signed it without ratifying.⁴
- 1998 Protocol of Amendment to the European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes (ETS No. 170), which establishes a simplified procedure for updating the terms of the convention to take account of the development of scientific understanding and practice. It has been ratified by 17 member States, most recently Lithuania in 2008, along with the EU.
- 2000 Council of Europe Landscape Convention (ETS No. 176), which aims to encourage public authorities to adopt policies and measures at local, regional, national and international level for protecting, managing and planning landscapes throughout Europe. It covers all landscapes that determine the quality of people's living environment. 40 member States have ratified this convention.
- 2006 Revised Convention for the Protection of Animals during International Transport (ETS No. 193). The revised convention builds on the lessons learnt since adoption of Convention ETS 193 and contains provisions designed to overcome defects and to facilitate the implementation of the principles of the convention. 13 member States have ratified the revised convention, most recently Türkiye in 2019.
- 2016 Protocol amending the Landscape Convention (CETS No. 219), which aims to promote European co-operation with non-European States who wish to implement the provisions of the Convention by opening it to their accession. 39 member States have ratified the protocol.

³ Committee of Ministers Resolution 87(2) setting up a co-operation group for the prevention of, protection against, and organisation of relief in major natural and technological disasters.

⁴ The European Committee on Crime Problems (CDPC) is currently working on the preparation of a new Council of Europe convention on the protection of the environment through criminal law.

4. Broadly speaking, the instruments above directly address environmental protection. They can be divided into three groups. The first group, ETS Nos. 065, 087, 102, 123 and 125 (plus subsequent protocols and revisions), addresses protection of animals in the context of farming and scientific experimentation and as pets. The second group, ETS Nos. 064, 104 and 176 (plus a subsequent protocol, CETS No. 219), addresses public policy to protect and preserve aspects of the natural environment. The third group, ETS Nos. 150 and 172 sought to establish legal protection of the environment through civil and criminal liability.

5. As regards human rights and the environment, the Council of Europe's key instruments are the European Convention on Human Rights (the Convention) and European Social Charter (the Charter) which provide important protection with respect to human rights and environmental matters, as demonstrated respectively by the caselaw of the European Court of Human Rights (the Court) and the conclusions and decisions of the European Committee on Social Rights (ECSR). These key human rights instruments have been applied in such a way as to ensure protection, respect and fulfilment of numerous rights against harm that emerges in the environmental context (often referred to as the "greening of human rights"). In the case of the Convention, the applicants relied on the right to life, the prohibition of inhuman and degrading treatment, the right to respect for private and family life and the home, right to property, and so-called participatory (procedural) rights such as freedom of expression (including access to information), freedom of assembly, right to a fair hearing (including access to a court) and the right to an effective remedy. In the case of the Charter, they include the rights to just conditions of work, to safe and healthy working conditions, to protection of health, and to housing.

6. The way in which the Convention and the Charter reflect the relationship between human rights and the environment is explored in detail in the [CDDH Manual on Human Rights and the Environment](#) (3rd Edition, adopted in 2021).

7. The Council of Europe Convention on Access to Official Documents (Tromsø Convention) which guarantees a general right to access official documents held by public authorities, including on environmental matters, is another noteworthy binding instrument. The Tromsø Convention is the only international legal instrument which guarantees a general right to access official documents held by public authorities. Its preamble refers in particular to the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). The Tromsø Convention currently has 14 Parties: Albania, Armenia, Bosnia and Herzegovina, Estonia, Finland, Hungary, Iceland, Lithuania, Montenegro, Norway, the Republic of Moldova, Slovenia, Sweden and Ukraine.

8. As well as binding instruments, the Committee of Ministers has also adopted non-binding instruments, most recently [Recommendation CM/Rec\(2022\)20](#) to member States on human rights and the protection of the environment, which was drafted by the CDDH. Environment-related standard-setting work has also continued in other Council of Europe bodies, such as the Consultative Council of European Prosecutors (CCPE), which has adopted Opinion No. 17 (2022) on the role of prosecutors in the protection of the environment. These have been supplemented with information and awareness-raising materials, including the HELP (Human rights Education for Legal Professionals) course on the environment and human rights, launched in 2021, and the Court's Case-law Guide on the environment, which is updated annually.

9. The Council of Europe's engagement with the issue of human rights and the environment has also been demonstrated through a series of high-level events, including two high-level conferences on environmental protection and human rights, one organised by the Georgian Presidency of the Committee of Ministers in February 2020 and the other by the Ministry of Foreign Affairs of Georgia and the European Court of Human Rights in October 2020. In April 2021, a high-level workshop was organised by the German Presidency of the Committee of Ministers in cooperation with the CDDH, on the topic "Environment, Human Rights and Business: a framework for addressing environmental protection challenges". This workshop stimulated dialogue on possible actions by the Council of Europe, including standard-setting work and greater engagement with private business actors, to support an enhanced understanding and full protection of human rights and the environment by businesses. On 3 May 2023, the Icelandic Presidency of the Committee of Ministers held a high-level conference on "The Right to a Clean, Healthy and Sustainable Environment in Practice". The conference provided important input for the work of the CDDH by presenting the practical application of the right to a clean, healthy and sustainable environment in the domestic legal context both in Europe and globally.

10. The 9th edition of the World Forum for Democracy in November 2020 explored the question, "Can Democracy Save the Environment?"

11. In February 2022, the Committee of Ministers held a thematic discussion on the issue of human rights and the environment during its exchange of views on the United Nations (human rights questions), with the participation of Mr David R. Boyd, UN Special Rapporteur on human rights and the environment. The same issue was the focus of an informal meeting of the Committee of Ministers organised by the Irish Presidency in October 2022.

12. The Parliamentary Assembly has adopted a number of relevant resolutions and recommendations, in particular: Resolution 2286 (2019) on "Air pollution: a challenge for public health in Europe", Resolution 2415 (2022) and Recommendation 2219 (2022) on "Inaction on climate change – A violation of children's rights", Resolution 2398 (2021) and Recommendation 2213 (2021) on "Addressing issues of criminal and civil liability in the context of climate change", Resolution 2477 (2023) and Recommendation 2246 (2023) on the "Environmental impact of armed conflicts", in addition to Resolution 2396 (2021) and Recommendation 2211 (2021) on "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe". Recommendation 2211 (2021), contains four proposals for strengthening the Council of Europe legal instruments, namely: to draw up additional protocols to the Convention and to the Charter, to prepare a feasibility study for a "Five Ps" convention on environmental threats and technological hazards threatening human health, dignity and life and to revise Recommendation CM/Rec(2016)3 on human rights and business with a view to strengthening corporate environmental responsibility for the adequate protection of the human right to a safe, clean, healthy and sustainable environment.⁵ It is important to note that PACE Recommendation 2211 (2021) includes a proposed text for an additional protocol to the Convention, concerning the right to a safe, clean, healthy and sustainable environment. The Assembly has also established a [Network of Contact Parliamentarians for a healthy environment](#),⁶ which aims to anchor the right to a clean, healthy and sustainable environment in law, policy, practice and public awareness in Europe and beyond.

⁵ See doc. CM/Del/Dec(2021)1416/3.1, 3 November 2021.

⁶ The Network's webpage includes links to all of the Assembly's work on the environment, including the reference texts to all of the Assembly's recommendations and resolutions on the environment and climate change.

13. At the Fourth Summit (“Reykjavík Summit”) held between 16-17 May 2023, the Heads of State and Government of the Council of Europe, in the [Reykjavík Declaration](#), underlined the urgency of taking co-ordinated action to protect the environment by countering the triple planetary crisis of pollution, climate change, and loss of biodiversity, and committed to strengthening the Council of Europe’s work on the human rights aspects of the environment. To this end, they initiated the “Reykjavík Process”, and encouraged the establishment of a new intergovernmental committee on environment and human rights (“Reykjavík Committee”) and called for rapid conclusion of the CDDH’s feasibility study.

14. Against this institutional background, and the wider background of European and international law generally, the present report will *inter alia* address the need for and feasibility of binding and/ or additional non-binding Council of Europe instruments, as well as the possible content of any such instrument(s).

15. Work on the present report began at the 5th meeting of the CDDH drafting group on human rights and the environment (CDDH-ENV) in September 2022. At this meeting, the CDDH-ENV held a two-day exchange of views with external independent experts and representatives of the Parliamentary Assembly and the ECSR, with the participation of Prof. Helen Keller, Mr Sébastien Duyck, Prof. John H. Knox, Dr Lea Raible, Prof. Elisabeth Lambert, Mr Simon Moutquin (Parliamentary Assembly), and Prof. Giuseppe Palmisano (ECSR).

16. At the same meeting, the CDDH-ENV adopted a questionnaire to member States on recognition and protection of the right to a healthy environment in national law.⁷ The following 27 member States replied to this questionnaire: Andorra, Armenia, Austria, Azerbaijan, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Italy, Latvia, Malta, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Sweden, Switzerland, Türkiye, and the United Kingdom.

17. At its 6th meeting, the CDDH-ENV adopted a draft outline for the report on the need for and feasibility of a further instrument or instruments in the field of human rights and the environment.

18. At its 7th meeting, the CDDH-ENV examined the replies to the questionnaire to member States on protection at national level of the right to a clean, healthy and sustainable environment and completed its first reading of a partial first draft of the report. The CDDH-ENV asked its Rapporteur, Nicola WENZEL (Germany), to present a revised version of the first part of the report and text for its chapter III for examination at its next meeting. On 3 May 2023, members of the CDDH-ENV participated in the High-level conference on the right to a clean, healthy and sustainable environment in practice, organised by the Icelandic Presidency of the Committee of Ministers, with the support of the Council of Europe Secretariat.

⁷ See Appendix I.

19. The present report will analyse the potential need for a further instrument or instruments from the following perspectives. First, it aims to identify if there is a problem that requires a response. Second, it will explore the involvement of human rights in this problem. Third, the report will evaluate the effectiveness of existing instruments in addressing the human rights aspects related to the issue. And fourth, the report will examine the process of recognition and protection of the right to a clean, healthy and sustainable environment, on the basis of the CDDH's mandate to bear in mind the Parliamentary Assembly's proposal to protect this right through additional protocols to the European Convention on Human Rights and the European Social Charter.

II. Potential need for a further instrument or instruments

20. Today humanity is facing an unprecedented challenge in the form of environmental degradation and the triple planetary crisis of climate change,⁸ nature and biodiversity loss,⁹ and pollution.¹⁰ Individuals and communities around the world are affected and the consequences are most severe for those who are already in vulnerable and exposed situations and will be felt even more strongly by the younger and future generations.

21. The climate crisis, defined as the greatest threat to human rights by the former United Nations High Commissioner for Human Rights,¹¹ requires a rights-based approach to mitigation and adaptation, according to the report published by the Intergovernmental Panel on Climate Change (IPCC) which was politically endorsed by all States Parties to the Council of Europe.¹² The alarming decline in biodiversity,¹³ coupled with air and water pollution's detrimental impact on human well-being,¹⁴ further underscores the need for environmental protection to ensure the full enjoyment of human rights.

⁸ IPCC, 2022: Summary for Policymakers [H.-O. Pörtner, D.C. Roberts, E.S. Poloczanska, K. Mintenbeck, M. Tignor, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem (eds.)]. In: *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press [IPCC 2022 Report]; for a definition of climate change see United Nations Framework Convention on Climate Change (UNFCCC) (1992), UNTS vol. 1771, Art. 1(2)

⁹ Report of the Special Rapporteur on human rights and the environment, 2017, A/HRC/34/49, <https://undocs.org/A/HRC/34/49>; and IPBES (2019): *Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). IPBES secretariat, Bonn, Germany, 11.

¹⁰ United Nations Environment Program, Implementation plan "Towards a Pollution-Free Planet", UNEP/EA.4/3; Landrigan, Philip J., and others (2017), *The Lancet Commission on Pollution and Health*. Available at [https://doi.org/10.1016/S0140-6736\(17\)32345-0](https://doi.org/10.1016/S0140-6736(17)32345-0).

¹¹ Michelle Bachelet, former UN High Commissioner for Human Rights (September 2019), available at <https://www.theguardian.com/law/2019/sep/09/climate-crisis-human-rights-un-michelle-bachelet-united-nations>; see also Ian Fry, Special Rapporteur on the promotion and protection of human rights in the context of climate change, *Climate change the greatest threat the world has ever faced*, press release (October 2022), available at <https://www.ohchr.org/en/press-releases/2022/10/climate-change-greatest-threat-world-has-ever-faced-un-expert-warns>

¹² IPCC, *Climate Change 2023: Synthesis Report. A Report of the Intergovernmental Panel on Climate Change. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)], IPCC, Geneva, Switzerland [IPCC AR6 SYR].

¹³ UNEP, *Human Rights and Biodiversity: Key Messages, 2021*; see also IPBES, *Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*, 2019, IPBES secretariat, Bonn, Germany at key messages A and B; Ch. 4, section 4.4.1.1.; see also Ch. 5, section 5.4.1.5

¹⁴ World Health Organization, Household air pollution, 28 November 2022, available at <https://www.who.int/news-room/fact-sheets/detail/household-air-pollution-and-health>; European Environment Agency (EEA), Air quality in Europe

22. These are common concerns requiring urgent action, including as a matter of inter-generational equity and solidarity.¹⁵

23. The acknowledgment of the linkages between human rights and the environment has grown significantly in recent years. The quantity and breadth of international and domestic regulations, legal rulings, and academic research on the connection between human rights and the environment are quickly expanding. The linkages have also been recognised by the Parliamentary Assembly¹⁶ and the Committee of Ministers¹⁷ of the Council of Europe. This has resulted in the increased recognition – at the national, regional¹⁸ and international¹⁹ levels – of the right to a clean, healthy and sustainable environment.

24. The urgency of addressing these questions is also voiced by civil society. The Conference of International Non-Governmental Organisations (INGOs) of the Council of Europe, in the context of climate change, demanded that international negotiations go beyond the strict context of greenhouse gas reductions and include the protection of the fundamental rights of all human beings, taking into account the impact of all phenomena related to climate change on the enjoyment of these rights.²⁰ At the high-level conference on environmental protection and human rights, organised by the Georgian Presidency of the Committee of Ministers of the Council of Europe in February 2020, the President of the Conference of INGOs called upon the Committee of Ministers to define environmental issues as a priority.²¹ More recently, in March 2023, as an outcome of the Civil Society “Shadow” Summit, the INGO Conference together with the CURE Campaign issued the Hague Civil Society Declaration on Council of Europe Reform, calling on the Council of Europe to “address the triple planetary crisis of climate change, biodiversity loss and pollution as a supreme human rights crisis” and more specifically to “recognise and protect a

2021, available at <https://www.eea.europa.eu/publications/air-quality-in-europe-2021/health-impacts-of-air-pollution>; EEA, Air quality in Europe 2022, available at <https://www.eea.europa.eu/publications/air-quality-in-europe-2022>; EEA, Air pollution levels across Europe still not safe, especially for children, April 2023 <https://www.eea.europa.eu/en/newsroom/news/air-pollution-levels-across-europe>; and Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Human rights and the global water crisis: water pollution, water scarcity and water-related disasters, 19 January 2021, UN Doc. No. A/HRC/46/28. See also Office of the High Commissioner for Human Rights, The water crisis has a “major impact on human rights” expert say, 2021, available at <https://www.ohchr.org/en/stories/2021/03/water-crisis-has-major-impact-human-rights-expert-says>.

¹⁵ CM/Rec(2022)20.

¹⁶ PACE Recommendation 2211(2021), *Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe* (September 2021).

¹⁷ Committee of Ministers Recommendation CM/Rec(2022)20, *Recommendation of the Committee of Ministers to member States on human rights and the protection of the environment* (September 2022).

¹⁸ See for instance African Charter on Human and Peoples’ Rights, adopted June 27, 1981 – entered into force on October 21, 1986, 1520 UNTS 217 at Art. 24; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol), adopted November 17, 1988 – entered into force on November 16, 1999, at Article 11; Arab Charter on Human Rights, adopted May 22, 2004 – entered into force on March 15, 2008, at Article 38; ASEAN Human Rights Declaration, adopted on 18 November 2012, at Article 28 (f); Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), adopted on March 4, 2018 – entered into force on April 22, 2021, at Article 1.

¹⁹ See UN General Assembly, *The human right to a clean, healthy and sustainable environment*, July 2022, UN Doc. No. A/RES/76/300; Human Rights Council, *The human right to a clean, healthy and sustainable environment*, October 2021, UN Doc. no. A/HRC/RES/48/13; Human Rights Council, *The human right to a clean, healthy and sustainable environment*, April 2023, UN Doc. No. A/HRC/RES/52/23.

²⁰ Recommendation on ‘climate change and human rights’ for the United Nations Climate Change Conference (COP24) to be held in Katowice, Poland, from 3 to 14 December 2018 Adopted by the Standing Committee on behalf of the Conference of INGOs, CONF/PLE(2018)REC3.

²¹ Intervention by Anna Rurka, President of the Conference of INGOs of the Council of Europe, high-level Conference on Environmental Protection and Human Rights, CONF/PRES/SPEECH(2020)1.

legally binding, autonomous right to a clean, healthy and sustainable environment through an additional protocol to the European Convention on Human Rights."²²

25. There is an extensive regulatory framework concerning the protection of the environment that is already in place and producing effects both under national and international law. The question nevertheless remains whether the level of protection afforded by the already existing international instruments is sufficient to meet the critical human rights challenges posed by the triple planetary crisis.

A. Recognition of the interdependence of human rights and environmental protection in international law

26. The Committee of Ministers, in Recommendation CM/Rec(2022)20 to member States on human rights and the protection of the environment, has already recognised that “measures to address the triple planetary crisis of climate change, loss of biodiversity and pollution are essential to the better enjoyment of human rights” and that “life and well-being on our planet are contingent on humanity’s collective capacity to guarantee both human rights and a clean, healthy and sustainable environment for present and future generations” – in other words, that effective protection of the environment depends on full enjoyment of human rights, and full enjoyment of human rights depends on effective protection of the environment. It is nevertheless instructive to review the evolution of this awareness at the international level, and to examine in more detail the way in which this connection has been articulated.

i. Human rights and environmental protection in relevant UN treaties

27. The 1992 UN Convention on Biological Diversity²³ is one of the four international agreements that were adopted at the “Earth Summit” in Rio de Janeiro.²⁴ It entered into force on 29 December 1993 and has 196 signatories. The Convention on Biological Diversity recalls the importance of biological diversity for maintaining life sustaining systems of the biosphere and affirms that its conservation is a common concern of mankind.²⁵

28. Concerning climate change, the Paris Agreement, adopted by consensus at COP 21 on 12 December 2015, together with the 1992 United Nations Framework Convention on Climate Change (UNFCCC) establishes a legal framework for climate action.²⁶ It entered into force on 4 November 2016 and has 195 signatories.

29. The Paris Agreement is the first global environmental treaty that makes direct reference to States’ human rights obligations by stating that “[p]arties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights”.²⁷

30. It should be noted that, whilst these important instruments recognise in different ways the inter-connection between environmental issues and various aspects of human rights, they do not establish specific standards or protection mechanisms in this respect.

²² See <https://cure-campaign.org/wp-content/uploads/CSSDeclarationFinal.pdf> (at point 6).

²³ Convention on Biological Diversity, June 5, 1992, 31 I.L.M. 818 (entered into force Dec. 29, 1993).

²⁴ The Agreements include the Rio Declaration, Convention on Climate Change, Convention on Biological Diversity and Statement of Principles on Forests.

²⁵ Ibid. Article 1.

²⁶ Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

²⁷ Ibid. Preamble.

ii. Human rights and environmental protection in the work of relevant UN bodies and special procedures

31. Due to the constraints of the present report, it is not possible to present a comprehensive overview of all relevant UN instruments and special procedures. Appendix II contains a compilation of work on environment, climate change and human rights, as prepared by the United Nations Human Rights Office. For the purpose of the present report, we highlight the following.

32. On 8 October 2021, the HRC adopted Resolution 48/13 on “[t]he human right to a clean, healthy and sustainable environment”.²⁸ The text of HRC Resolution 48/13 was proposed by, among others, two Council of Europe member States, Slovenia and Switzerland. It was passed with 43 votes in favour and 4 abstentions. All Council of Europe member States participating in this vote voted in favour, including Armenia, Austria, Bulgaria, Czech Republic, Denmark, France, Germany, Italy, Netherlands, Poland, Ukraine, United Kingdom. The HRC Resolution was accompanied by Explanations of Votes, including from Council of Europe members. The HRC also established on the same day, via Resolution 48/14, a Special Rapporteur on the promotion and protection of human rights in the context of climate change.

33. HRC Resolution 48/13 politically recognised for the first time the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights, while simultaneously encouraging States to cooperate on the implementation of this right. In its preamble, Resolution 48/13 stresses the negative direct and indirect implications of environmental damage for the effective enjoyment of human rights and highlights that “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy human rights, including the right to life.” Resolution 48/13 also noted that the right to a clean, healthy and sustainable environment is related to other rights and existing international law and affirmed that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law.

34. Based on the text adopted by the HRC, the UN General Assembly, on 28 July 2022, with a record vote of 161 States (including those of all Council of Europe member States) in favour, zero against and eight abstentions, adopted resolution 76/300 recognising the right to a clean, healthy and sustainable environment as a human right (GA Resolution).²⁹ Among the co-sponsors of the GA Resolution were 24 Council of Europe member States.³⁰ The GA Resolution was also accompanied by a number of explanations of votes, including of Council of Europe member States. The present report goes into more detail on these votes in paragraph 94 below.

35. The GA Resolution uses similar wording to the HRC Resolution 48/13 and recognises the right to a clean, healthy and sustainable environment as a human right. Following the wording of

²⁸ According to the core group president (Costa Rica), the word “safe” had been removed from the draft text of Resolution 48/13 so that it refers to a right to a clean, healthy and sustainable environment more faithfully capturing the results of the consultations and dialogues, as the adjective “safe” was not clear enough for the parties involved, see the presentation of the draft resolution: <https://media.un.org/en/asset/k1g/k1g6cdjnxl>

²⁹ UN General Assembly resolution, The human right to a clean, healthy and sustainable environment, 26 July 2022, A/RES/76/300.

³⁰ Andorra, Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Georgia, Germany, Greece, Latvia, Luxembourg, Monaco, Montenegro, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and Ukraine.

HRC Resolution 48/13, in its preambular paragraphs it recognises that the exercise of human rights, including the rights to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and to an effective remedy, is vital to the protection of a clean, healthy and sustainable environment. It notes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law; and affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law. The entire text of GA Resolution 76/300 can be found in Appendix III of this report.

36. On 4 April 2023, the HRC adopted by consensus resolution 52/23 on the right to a clean, healthy and sustainable environment.³¹ The resolution, among others, calls upon States to adopt and implement strong laws ensuring rights to participation, access to information, and justice in environmental matters; to facilitate public awareness and participation in environmental decision-making and to provide for effective remedies for human rights violations and abuses relating to the enjoyment of the human right to a clean, healthy and sustainable environment. Moreover, it encourages States to adopt integrated, intersecting and holistic national and local policies and an effective legal framework for the enjoyment of the human right to a clean, healthy and sustainable environment.³² In addition, it also calls upon States, international organisations, business enterprises and other relevant stakeholders to adopt policies, enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.

37. Judicial and non-judicial bodies within the UN system are also being requested to interpret existing international obligations in the context of climate change.

38. On 29 March 2023, the UN GA adopted by consensus a resolution formally requesting an advisory opinion from the International Court of Justice (ICJ) on the obligations of States in respect of climate change.³³ In particular, this request asked the following questions: (a) what are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations; and (b) what are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to States, including, in particular, small island developing States [...] and Peoples and individuals of the present and future generations affected by the adverse effects of climate change? By referring explicitly to international human rights instruments including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), this request may provide an opportunity for the ICJ to make pronouncements on States' international human rights obligations with respect to climate change.

³¹ At the time of the adoption by consensus of this resolution, the following members of the Council of Europe were members to the Human Rights Council and participated in the adoption of this resolution: Belgium, Czech Republic, Finland, France, Georgia, Germany, Lithuania, Luxembourg, Montenegro, Romania, Ukraine and the United Kingdom. The resolution was also sponsored by other Council of Europe members including Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Estonia, Greece, Italy, Latvia, North Macedonia, Portugal, Slovakia, Slovenia, Spain and Switzerland.

³² UN HRC resolution, The human right to a clean, healthy and sustainable environment, 4 April 2023, A/HRC/52/7.

³³ UN General Assembly resolution A/RES/77/276, Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, 29 March 2023.

39. In their oversight of States' compliance with the major human rights treaties, such as the ICESCR³⁴ the ICCPR,³⁵ and the Convention on the Rights of the Child (CRC), United Nations human rights treaty bodies have applied human rights to environmental issues.

40. The UN Committee on Economic, Social, and Cultural Rights has interpreted the right to health under the ICESCR to include "the requirement to ensure an adequate supply of safe and potable water and basic sanitation; [and] the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health."³⁶

41. The UN Human Rights Committee, which supervises the ICCPR, released a General Comment on the right to life in 2018, emphasising that States' obligation to protect life also entails that they should take adequate measures to alleviate societal conditions that may threaten life, such as environmental degradation.³⁷ In 2019, the UN Human Rights Committee held that Paraguay had violated its obligations under Article 6 (on the right to life) and Article 17 (on the right to private and family life) of the ICCPR when it failed to adequately regulate large-scale spraying with toxic agrochemicals and investigate the death of an agricultural worker exposed to such chemicals.³⁸ In the same year, five treaty bodies issued a joint statement on climate change calling for States to implement policies aimed at reducing emissions to realise the objectives of the Paris Agreement.³⁹

42. UN treaty bodies are increasingly being asked to decide climate cases.⁴⁰ In *Sacchi et al. v Argentina, Brazil, France, Germany and Turkey*, the UN Committee on the Rights of the Child was asked whether the respondents had violated children's rights under the UN Convention on the Rights of the Child by making insufficient cuts to greenhouse gas emissions and failing to use available tools to protect children from the adverse effects of climate change. While the Committee held that the petitioners had shown, for jurisdictional purposes, that the impairment of their rights was a result of the State party's acts or omissions regarding carbon emissions, the complaint was ultimately found inadmissible for failure to exhaust local remedies.⁴¹ In the case of *Teitiota v. New Zealand*, the UN Human Rights Committee in September 2020 found that countries may not deport individuals seeking asylum who face climate change-induced conditions that violate the right to life; it did not, however, find a violation in the particular circumstances of the case. In September 2022, the UN Human Rights Committee found that Australia's failure adequately to protect indigenous Torres Islanders by taking insufficient adaptation measures against adverse impacts of climate change amounted to a breach of Article 17 (right to respect for private, family and home life) and 27 (rights of ethnic, religious or linguistic minorities) of the ICCPR.⁴²

³⁴ United Nations (General Assembly). "International Covenant on Economic, Social, and Cultural Rights." Treaty Series, vol. 999, Dec. 1966.

³⁵ United Nations (General Assembly). (1966). International Covenant on Civil and Political Rights. Treaty Series, 999, 171.

³⁶ General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (2000), para. 15.

³⁷ General comment no. 36 para. 26.

³⁸ *Portillo Cáceres and others v. Paraguay*, No. 2751/2016 (2019), para. 7.5.

³⁹<https://www.ohchr.org/en/statements/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human-rights-and>

⁴⁰ Human Rights Committee, *Teitiota v. New Zealand*, UN Doc. CCPR/C/127/D/2728/2016 (2020); UN Committee on the Rights of the Child, *Sacchi et al v Argentina et al.*, UN Doc. CRC/C/88/D/107/2019 (2021).

⁴¹ UN Committee on the Rights of the Child, CRC/88/D/104/2018.

⁴² Human Rights Committee, views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019, CCPR/C/135/D/3624/2019.

43. In August 2023, the UN Committee on the Rights of the Child adopted General Comment No. 26 on children’s rights and the environment, with a special focus on climate change.⁴³ The Committee stresses the principle of intergenerational equity and the interests of future generations, stating that “States bear the responsibility for foreseeable environment-related threats arising as a result of their acts or omissions now, the full implications of which may not manifest for years or even decades”.⁴⁴ Section II of the General Comment describes the connections between the environment and provisions of the Convention on the Rights of the Child (CRC), Section IV is devoted to general measures of implementation, and Section V deals with climate change. Section III is devoted to the right to a clean, healthy and sustainable environment and will be examined in further detail in section C below.

44. Moreover, the UN Committee on Economic, Social and Cultural Rights is preparing a General Comment on Sustainable Development⁴⁵ and the UN Committee on the Rights of Persons with Disabilities is working on a General Comment on persons with disabilities in situations of risk and humanitarian emergencies, which will consider contexts related to climate change.⁴⁶

45. UN special procedures have also been developed to address human rights and environmental concerns. The HRC established the mandate for the Independent Expert on human rights and the environment in 2012⁴⁷ which was subsequently extended.⁴⁸ The UN Special Rapporteur on human rights and the environment examines the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; promotes best practices and identifies challenges and obstacles to the global recognition and implementation of the right to a safe, clean, healthy and sustainable environment. In 2018, the Special Rapporteur presented Framework Principles on Human Rights and the Environment, which summarise States’ human rights obligations relating to the environment.⁴⁹

46. The Special Rapporteur on the promotion and protection of human rights in the context of climate change was established by the UN Human Rights Council at its 48th session in October 2021. This Special Rapporteur, among other things, studies the impact of climate change on human rights, provides recommendations to address it, promotes human rights integration in climate policies, and raises awareness.

47. The Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes was established in 1995. The UN Commission on Human Rights created the mandate to investigate the human rights consequences of hazardous substances and toxic waste. This encompassed issues such as the illicit trafficking and release of dangerous products during conflicts, as well as shipbreaking, medical waste, and extractive industries. In 2011, the UN Human Rights Council recognized the danger of hazardous substances and waste to human rights. It expanded the mandate to cover

⁴³ UN Committee on the Rights of the Child, CRC/C/GC/26.

⁴⁴ Ibid. para 11.

⁴⁵ UN Committee on Economic, Social and Cultural Rights draft general comment on sustainable development [UN doc no. to be updated].

⁴⁶ UN the Rights of Persons with Disabilities draft general comment on persons with disabilities in situations of risk and humanitarian emergencies [UN doc no. to be updated].

⁴⁷ HRC resolution 19/10.

⁴⁸ HRC resolution 48/14.

⁴⁹ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/HRC/37/59 (2018), annex.

the entire life-cycle of such products. The mandate was last renewed in 2020 through resolution A/HRC/RES/45/17.⁵⁰

48. As can be seen from the list above, UN organs and special procedures are engaged on a wide scale with the examination of the interaction between human rights and the protection of the environment with a special focus on environmental degradation and the triple planetary crisis⁵¹. It should be noted, however, that, these mechanisms do not adopt binding decisions, and as a result their effectiveness as human rights protection mechanisms, including in respect of their interpretation and application of human rights in the environmental context, is somewhat limited.

iii. Human rights and environmental protection in Council of Europe instruments

49. For the purposes of the present report, it is imperative to highlight the current status of the environmental protection afforded by the Convention and the Charter, as interpreted by the Court and the ECSR respectively.

50. While the Convention does not contain an explicit right to a clean, healthy and sustainable environment, the Court has so far ruled in over 300 environment-related cases invoking issues under Articles 2, 3, 6(1), 8, 10, 11, 13 and Article 1 of Protocol No.1 to the Convention.⁵²

51. Under Article 2 (the right to life) and Article 3 (prohibition of inhuman or degrading treatment), the Court has examined situations concerning dangerous industrial activities; exposure to nuclear radiation; industrial emissions, natural disasters and passive smoking in prison. Under Article 6(1) (right to a fair trial), the Court has addressed the issue of access to court concerning environmental matters and the failure to enforce final judicial decision on those matters. The Court's Article 8 (right to respect for private and family life and home) associated caselaw concerns issues such as environmental risk and access to information; industrial pollution; noise pollution; mobile phone antennas; emission from diesel vehicles; soil and water contamination; urban development; or waste collection, management, treatment and disposal. Under Article 10 (freedom of expression), the Court has examined issues concerning the freedom to receive and impart information on environmental matters whereas under Article 11 (freedom of assembly and association) it dealt with the right to assemble and associate for collective action in the interest of environmental matters. The Court's caselaw on Article 1 of Protocol No.1 to the Convention (protection of property) ranges from the obligation to tolerate hunting on the land owned by those who object to hunting on ideological grounds to States' positive obligations concerning the protection of property in case of natural disasters. Under Article 13 (the right to an effective remedy) it examined the issue of the right to an effective remedy pertaining to the substantive rights listed above. Thus, various environmental concerns can already be examined by the Court, framed in terms of Convention rights.

52. It should be noted that the Court develops its interpretation of the text of the Convention in response to legal, social, ethical or scientific developments, by application of the "living instrument doctrine" according to which "the Convention is a living instrument which [...] must be interpreted in the light of present-day conditions".⁵³ This allows the Court to respond to new

⁵⁰ HRC Resolution A/HRC/RES/45/17.

⁵¹ Appendix II of the present report contains a comprehensive compilation of work on environment, climate change and human rights as prepared by the United Nations Human Rights Office.

⁵² See https://www.echr.coe.int/documents/fs_environment_eng.pdf and the CDDH Manual on Human Rights and the Environment (3rd Edition, adopted in 2021).

⁵³ *Tyrrer v. the United Kingdom*, application no. 5856/72, judgment of 25 April 1978, § 31.

challenges. As a result, the Court's caselaw concerning environmental matters is not set in stone. The Court may further develop its jurisprudence in response to the triple planetary crisis to accommodate environmental concerns more broadly.

53. The Court is also faced with novel claims in the form of climate change applications. At present, there are three climate change mitigation cases under examination by the Grand Chamber of the Court,⁵⁴ with seven other cases adjourned until the Grand Chamber has ruled in these three cases.⁵⁵ The Court has previously declared two applications inadmissible for lack of victim status.⁵⁶

54. Broadly speaking, these cases concern similar procedural (the victim status of applicants or the extraterritoriality of human rights obligations) and substantive questions (the applicants in these cases variously rely on Articles 2, 3, 8, 13, 14 and Article 1 of Protocol No. 1 to the Convention), including the States' failure to adhere to their positive obligations by their alleged non-compliance with their commitments under the 2015 Paris Agreement or the alleged inadequacy of their greenhouse gas emission reduction targets.⁵⁷

55. As to the Charter, while it does not explicitly contain a right to a healthy environment as such, the ECSR through its activity of monitoring and interpreting the Charter, has been able to make an important contribution to clarifying and putting into practice the relationship between environmental protection and social rights. This has been possible, in particular, with regard to the application and interpretation of the right to protection of health, which is enshrined in Article 11 of the Charter.

56. Article 11 of the Charter obliges States to take appropriate measures to remove as far as possible the causes of ill health, and to prevent epidemic, endemic and other diseases. According to the ECSR, this means that public health systems must respond appropriately to avoidable health risks, i.e. risks that can be controlled by human action which include environmental threats. Consequently, the ECSR has interpreted the right to protection of health to include the right to a healthy environment.⁵⁸

57. Following such an approach, the ECSR has clarified that measures must be designed by States to remove the causes of ill health resulting from environmental threats such as pollution,⁵⁹ and to protect the population against, for example, nuclear hazards⁶⁰ as well as against health risks related to asbestos.⁶¹ Likewise, situations where availability of drinking water represents a problem for a significant proportion of the population has been considered by the ECSR to be in breach of Article 11 of the Charter.⁶² It is also notable that in the case of States that have not accepted Article 31 (right to housing), the enforcement of public health standards in housing is

⁵⁴ *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, application no. 53600/20; *Carême v. France*, application No. 7189/21; and *Duarte Agostinho and Others v. Portugal and 32 Others*, application no. 39371/20.

⁵⁵ Press Release issued by the Registrar of the Court, ECHR 035 (2023), 3 February 2023.

⁵⁶ *Human Being and Others v. the United Kingdom*, application no. 36959/22, *Plan B. Earth and Others v. the United Kingdom*, application no. 35057/22.

⁵⁷ Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

⁵⁸ *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, complaint no.30/2005, decision on the merits of 6 December 2006, §§ 194-195, §202.

⁵⁹ *Ibid.* §§ 203, 209, 210 and 215.

⁶⁰ Conclusions XV-2 (2001), France; Conclusions XV-2 (2001), Denmark.

⁶¹ Conclusions XVII-2 (2005), Latvia.

⁶² Conclusions 2013, Georgia.

required under Article 11.⁶³ The ECSR has also emphasised that States have positive obligations in order to combat air pollution.⁶⁴ States are required to take measures to remove the causes of ill-health from environmental threats such as pollution, within a reasonable time, by showing measurable progress and making best possible use of the resources at their disposal.⁶⁵

58. In addition, the ECSR has considered that 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.⁶⁶

59. Like the Convention, the Charter is also considered as a living instrument, in that the Charter and the rights and freedoms set out in it are to be interpreted “in the light of current conditions.”⁶⁷ The ECSR, similarly to the Court, is able therefore to respond to new challenges by the application of this interpretative doctrine.

60. On 27 September 2022, the Committee of Ministers adopted a reform package aimed at modernising the European Social Charter system with a view to increasing the effectiveness of the system.⁶⁸ This reform concerns also the reporting procedure (one of the two existing monitoring mechanisms) under the Charter which is evolving from a general and formal reporting by States on each Charter provision, to a targeted and strategic choice of issues that States are called upon to report on. This may represent an opportunity to include environmental issues within the scope of the new formal reporting procedure.⁶⁹

61. The ECSR may also adopt “statements of interpretation” specifically dedicated to environmental issues.⁷⁰ Examples of this practice in other contexts are the two Statements on the right to protection of health in times of pandemic, and on COVID-19 and social rights, that the Committee adopted in 2020 and 2021. A future statement of interpretation could potentially encompass the impact of environmental issues on a number of social rights other than the right to protection of health (Article 11): the right to just conditions of work (Article 2 of the Charter), the right to safe and healthy working conditions (Article 3 of the Charter), the right of children and young persons to protection (Article 7 and 17), the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15), the right of the family to social, legal and economic protection (Article 16), the right of elderly persons to social protection (Article 23), the right to protection against poverty and social exclusion (Article 30) and the right to housing (Article 31).⁷¹

⁶³ Conclusions XVII-2 (2005), Portugal.

⁶⁴ *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint No.30/2005, decision on the merits of 6 December 2006, §203; and the CDDH Manual on Human Rights and the Environment (3rd Edition, adopted in 2021), p. 118.

⁶⁵ *Ibid*, §204.

⁶⁶ *International Federation of Human Rights Leagues (FIDH) v. Greece*, Complaint No. 72/2011, decision on the merits of 23 January 2013, §§ 150-152

⁶⁷ *International Commission of Jurists v. Portugal*, Complaint No. 1/1999, E.C.S.R. § 32 (1999). This decision echoes the approach and the language used by the European Court of Human Rights in the context of the European Convention.

⁶⁸ CM(2022)114-final, 1444th meeting, 27 September 2022.

⁶⁹ CDDH-ENV Extended summary of the exchange of views with external independent experts and representatives of the Parliamentary Assembly and the European Committee on Social Rights (13-15 September 2022) prepared by the Secretariat [Extended Summary], p. 63.

⁷⁰ Extended Summary, p. 64.

⁷¹ Statement of interpretation on the right to protection of health in times of pandemic (adopted by the Committee on 21 April 2020); Statement on COVID-19 and social rights adopted on 24 March 2021.

iii. Human rights and environmental protection in the European Union

62. The European Union (EU), through its primary and secondary legislation, also offers a wide range of legal instruments for the protection of the environment; however, there is no recognition of an autonomous right to a clean, healthy and sustainable environment within the legal system of the European Union.

63. In terms of primary legislation, Article 3 of the Treaty on European Union (TEU) and Articles 6, 11, and 191 – 193 of the Treaty on the Functioning of the European Union (TFEU) set out a series of principles and criteria, which must be respected by the institutions in defining and implementing the environmental policy. Moreover, the Charter of Fundamental Rights of the European Union states that “[a] high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development”.⁷²

64. In terms of secondary legislation EU institutions have adopted a range of EU instruments and procedures to ensure a high level of protection of the environment in the form of regulations and directives.

65. Moreover, EU legislation on the environment is applicable for member States of the European Economic Area (EEA), as set out in Articles 73-75 and Annex XX of the EEA Agreement.⁷³ Notably, in the preamble to the EEA Agreement, the contracting parties state their determination to preserve, protect and improve the quality of the environment and to ensure prudent and rational utilisation of natural resources on the basis of the principle of sustainable development, as well as the principle that precautionary and preventive action should be taken. They also state their determination to take a high level of protection concerning health, safety and the environment as a basis for further development of rules.

66. The European Union and its member States are also parties to the Aarhus Convention. The EU is implementing the provisions of the Aarhus Convention through various directives.⁷⁴ The EU's institutions ensure the implementation of the Aarhus Convention in their decision-making processes through Regulation No 1367/2006 (Aarhus Regulation).⁷⁵ The Court of Justice of the EU (CJEU) has also addressed access to justice in environmental matters even before the EU's ratification of the Aarhus Convention.⁷⁶ Since 2005, the CJEU has ruled on approximately 50 cases related to access to justice in environmental matters, covering various aspects such as

⁷² Article 37 of the Charter of Fundamental Rights.

⁷³ Annex XX of the Agreement on the European Economic Area. <https://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Annexes%20to%20the%20Agreement/annex20.pdf>

⁷⁴ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, available at : <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003L0004&qid=1615481237607>; and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ L 156, 25.6.2003, p. 17), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003L0035>.

⁷⁵ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006R1367>.

⁷⁶ C-431/92 Grosskrotzenburg (1995), C-72/95 Kraaijeveld (1996), C-435/97 WWF (1999) and C-201/02 Delena Wells (2004).

standing for individuals and environmental non-governmental organizations (ENGOs).⁷⁷ The CJEU has clarified, among others, that national procedures should be interpreted to enable NGO standing in environmental cases and that NGOs can represent the environmental interest based on both national legislation and EU environmental law with direct effect. These judgments align with the European Green Deal's goal of strengthening access to justice for the public.⁷⁸

67. In addition, the EU Ombudsman also plays an important role in the protection of the environment and is primarily focused on ensuring transparency, accountability, and good governance within the institutions and bodies of the EU.⁷⁹ Article 43 of the Charter of Fundamental Rights of the EU guarantees the right to complain to the European Ombudsman. It is important to note that public interest complaints are also admissible before the EU Ombudsman.

68. The EU enlargement process also provides an opportunity for the protection of the environment through EU legislation as candidate countries (Albania, Republic of Moldova, Montenegro, the Republic of North Macedonia, Serbia, Türkiye, Ukraine) and potential candidate countries (Bosnia and Herzegovina, Georgia, Kosovo*) are required to implement the EU *acquis* in their respective legal systems prior to becoming EU member States.⁸⁰

B. Overview of existing Council of Europe and other international instruments that address the environment and/or human rights

69. The following table presents an overview of existing Council of Europe and some of the other international instruments that address human rights and/or the environment.

⁷⁷ C-237/07 Janeczek (2008), C-75/08 Mellor (2009), C-263/09 Djurgården (2010), C-240/09 LZ or Slovak Brown Bear (2011), C-115/09 Trianel (2011), C-128/09 Boxus, C-182/10 Solvay (2012), C-72/12 Altrip (2014), C-404/13 ClientEarth (2014), and C-243/15 Slovak Brown Bear II (2016).

⁷⁸ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal. Brussels 11.12.2019. COM/2019/640 final, p. 30, available at:

<https://eur-lex.europa.eu/legalcontent/EN/TXT/?qid=1596443911913&uri=CELEX:52019DC0640#document2>

⁷⁹See https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/europeanombudsman_en#:~:text=The%20European%20Ombudsman%20investigates%20complaints,EU%20Dbased%20associations%20or%20businesses

*All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

⁸⁰ See the "Copenhagen Criteria", <https://www.consilium.europa.eu/media/21225/72921.pdf>

Instrument	Legal Status	Material Scope	Monitoring Mechanism	Complaints procedure (Individual or Collective)	Legal status of the monitoring mechanism's decisions	Ratifications by Council of Europe member States
Council of Europe						
1950 European Convention on Human Rights (ETS No. 5)	Binding	Articles 2,3,8,10,11,6(1), 13 and Art. 1 of Protocol 1 to the Convention have been relied upon for environmental matters.	European Court of Human Rights	Individual applications lodged by any person, group of individuals, company or NGO claiming to have suffered a violation of their rights. Inter-State application. In principle no <i>actio popularis</i> .	Binding	46
1961 European Social Charter (ETS No. 35)	Binding	Articles 2,3,11 and 31 of the Charter have been related to human rights and the environment.	European Committee of Social Rights (in two procedures: the periodical reporting procedure and the collective complaints procedure)	Collective complaints procedure lodged by the social partners and non-governmental organisations	Non-binding ⁸¹	42 <i>16 States have accepted the collective complaints procedure</i>
1979 Convention on the Conservation of European Wildlife and Natural	Binding	Aims to ensure conservation of wild flora and fauna and their habitats, with special attention to endangered and vulnerable species	Standing Committee; arbitral tribunal	Individual and collective complaints through the case	Non-binding	45

⁸¹ However, the decisions of the ECSR are widely regarded as representing an authoritative interpretation of the Charter which should be respected by State Parties. For example, the authoritative status of the ECSR decisions was recognised by domestic constitutional courts, such as the Italian Constitutional Court in Judgment No. 194 of 2018.

Habitats (the Bern Convention, ETS No. 104),				file system; reporting system;		
1993 Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (Lugano) (ETS No. 150)	Binding	Aims to ensure the adequate compensation for and prevention of damage resulting from activities dangerous to the environment.	Standing Committee	No complaints procedure	-	0 (never entered into force)
1998 Convention on the Protection of the Environment through Criminal Law (ETS No. 172)	Binding	The Convention aims to protect the environment by means of criminal law and harmonise national legislation on the subject. The preamble makes reference to the need to protect the life and health of human beings and Article 2 of the Convention obliges the Parties to adopt measures to establish criminal offences which through environmental harm causes death or serious injury to any person or creates a significant risk of causing death or injury.	European Committee on Crime Problems, or an arbitral tribunal, or the International Court of Justice, as agreed upon by the Parties concerned.	No complaints procedure	-	1 (never entered into force)
Committee of Ministers Recommendation (2022)20 to member States on human rights and the protection of the environment	Non-binding	The CM <i>i.a.</i> recommends that member States actively consider recognising the human right to a clean, healthy and sustainable environment at the national level.	-	-	-	-
United Nations						
1998 Convention on Access to Information, Public	Binding	Procedural dimensions of the right to a healthy environment, including “access rights” to information, participation and justice. It also	The Compliance Committee	Individual and collective mechanism allowing for	Non-binding	41

Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (2161 UNTS 447)		requires that people exercising these rights are not persecuted, penalised or harassed for doing so.		members of the public including both NGOs and individuals to make communications.		
1966 International Covenant on Civil and Political Rights (999 UNTS)	Binding	The ICCPR does not explicitly recognise a human right to a healthy environment. However, the Committee has addressed the impact of environmental harm on the enjoyment of a number of civil and political rights.	Human Rights Committee	Individual complaint procedure	Non-binding	46
1966 International Covenant on Economic Social and Cultural Rights (993 UNTS)	Binding	The ICESCR does not explicitly recognise a human right to a healthy environment. However, the Committee has interpreted the right to health to include certain environmental obligations.	Committee on Economic, Social and Cultural Rights	Individual complaint procedure	Non-binding	46
1989 Convention on the Rights of the Child (1577 UNTS)	Binding	The CRC establishes safeguards for children's rights concerning the environment, encompassing the child's right to highest attainable standard of health, including the right to nutritious food and safe drinking water, to issues of environmental pollution, as well as ensuring the child's right to information on environmental health issues and incorporates environmental education as an educational objective. In General comment No. 36, the Committee on the Rights of the Child stated that children have the right to a clean, healthy and sustainable environment which is implicit in the	Committee on the Rights of the Child	Individual complaint procedure	Non-binding	46

		Convention on the Rights of the Child				
1992 Convention on Biological Diversity (1760 UNTS)	Binding	The CBD recognises the close and traditional dependence of many indigenous and local communities on biological resources, as well as the vital role of women and the need for their full participation at all levels of policy-making and implementation for biological diversity conservation and that the conservation and sustainable use of biological diversity is of critical importance for meeting the food, health, and other needs of the growing world population.				
1992 United Nations Framework Convention on Climate Change and 2015 Paris Agreement (3256 UNTS)	Binding	The Paris Agreement – a <i>sui generis</i> legal instrument adopted under the UNFCCC – aims at enforcing a response to climate change globally. In the preamble of the agreement States are called upon, when taking action to address climate change, to "respect, promote and consider their respective obligations on human rights".	Implementation and Compliance Committee	No complaints mechanism	-	46
1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environment Modification Techniques (ENMOD)	Binding	ENMOD was adopted to prohibit the use of environmental modification techniques as a means of warfare. It recognises that military or any other hostile use of such techniques could have effects extremely harmful to human welfare and it intends to eliminate the dangers to mankind from such use.	Article V of the Convention provides for a consultation mechanism to solve any problem arising in relation to the objectives and in the application of the provisions of the Convention, including the	No complaints mechanism	-	27

			establishment of a Consultative Committee of Experts to be chaired by the Secretary-General of the United Nations.			
1972 Stockholm Declaration	Non-binding	The Stockholm Declaration is the outcome of the UN Conference in 1972. It was the first international document to recognise the link between human rights and the environment.	-	-	-	-
2019 Human Rights Council Resolution 40/11	Non-binding	Recognising the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development;				
2020 Human Rights Council Resolution 44/7	Non-binding	On human rights and climate change.	-	-	-	-
2020 Human Rights Council Resolution 45/17	Non-binding	On the mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes	-	-	-	-
2022 Human Rights Council Resolution 50/9	Non-binding	On realising the rights of the child through a healthy environment	-	-	-	-
2021 Human Rights Council Resolution 46/7	Non-binding	On human rights and the environment.	-	-	-	-
2021 Human Rights Council Resolution 48/13	Non-binding	First recognition of the right to a clean, healthy and sustainable environment as a human right.	-	-	-	-

2022 UN General Assembly Resolution (A/76/L.75)	Non-binding	This UNGA resolution recognises the human right to a clean, healthy and sustainable environment.	-	-	-	-
2022 UN General Assembly Resolution (76/300)	Non-binding	This UNGA resolution recognises the human right to a clean, healthy and sustainable environment.	-	-	-	-
2023 Human Rights Council Resolution 52/35	Non-binding	On the right to a clean, healthy and sustainable environment	-	-	-	-
2018 UN Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/HRC/37/59)	Non-binding	In this report the Special Rapporteur on Human Rights and the Environment presents the Framework Principles on Human Rights and the Environment which encourages States to not only 'respect, protect and fulfil' the right to a safe, clean, healthy and sustainable environment, but also to protect environmental human rights defenders and the freedom of association, expression and peaceful assembly.	-	-	-	-
United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)	Non-binding	The Declaration provides, among others, that Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.	-	-	-	-
2021 Glasgow Climate Pact	Non-binding	The Glasgow Climate Pact urges Parties to swiftly begin	-	-	-	-

		implementing the Glasgow work programme on Action for Climate Empowerment, respecting, promoting and considering their respective obligations on human rights, as well as gender equality and empowerment of women				
Other international instruments applicable to Council of Europe member States						
1977 Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Protocol I)	Binding	Protocol I supplements earlier principles and rules of international humanitarian law, and contains some important rules prohibiting a wide range of acts destructive of the environment in time of armed conflict.	No direct monitoring mechanism	No complaints mechanism	-	46

70. The Convention on the Protection of the Environment through Criminal Law (ETS No.172) (the 1998 Convention) was the first international, legally binding instrument requiring criminalisation of behaviour that is environmentally damaging. The preamble and section 2 of the convention on this issue make clear that its underlying purpose is to protect human life and health. The 1998 Convention did not, however, enter into force as the required threshold of three ratifications has never been attained.⁸² On 23 November 2022, the Committee of Ministers adopted Terms of Reference for the Committee of Experts on the Protection of the Environment through Criminal Law (PC-ENV) to elaborate a new convention, to supersede and replace the 1998 Convention.⁸³ Following the adoption of the Terms of Reference, the PC-ENV held its first meeting on 3-4 April 2023.⁸⁴

C. Material Scope of the human right to a clean, healthy and sustainable environment

71. Although the right to a clean, healthy and sustainable environment has been recognised politically at global level in UN General Assembly Resolution 76/300 (see further below), it is not yet legally protected at either global or European level. This means that there is not yet any common understanding amongst Council of Europe member States of the “nature, content and implications” of the right (to use the language of Recommendation CM/Rec(2022)20).

72. The present section therefore gives an overview of existing codifications, political endorsements and jurisprudential recognition of the right to a clean, healthy and sustainable environment in different jurisdictions. It uses the term “right to a healthy environment” as a generic, “shorthand” term that incorporates the qualifying adjectives used in the different instruments.⁸⁵ The aim of this section is to clarify the material scope of this right as it is currently set out in various instruments so as to provide a basis for the considerations in Section III of this report.

i. The right to a healthy environment at international level

73. The right to a healthy environment is recognised in (i) regional human rights instruments, (ii) certain multilateral environmental agreements (MEAs); (iii) resolutions of international and regional organisations; (iv) judicial pronouncements (advisory opinions and judgments); and (v) other soft law documents.

a) The right to a healthy environment in regional human rights instruments

The African Charter on Human and Peoples’ Rights

74. The African Charter on Human and Peoples’ Rights (the African Charter), adopted in 1981, is the first human rights convention to include in its Article 24 the right to a healthy environment in the form of a peoples’ right,⁸⁶ which states that

⁸² Only Estonia ratified the Convention in 2002.

⁸³ Terms of reference of the Committee of Experts on the protection of the environment through criminal law (PC-ENV), https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a91ebb

⁸⁴ PC-ENV(2023)02.

⁸⁵ See Centre for International Environmental Law, ‘Interpreting the Meaning of “Safe”, “Clean”, “Healthy”, and “Sustainable”, in the Right to Environment, 21 May 2020.

⁸⁶ In addition, the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa confers the right to a healthy and sustainable environment to women.

“[a]ll peoples shall have the right to a general satisfactory environment favorable to their development.”

75. Both the African Commission for Human and Peoples’ Rights (African Commission) and the African Court on Human and Peoples Rights have a broad understanding of “peoples” that covers the population as the constituent element of the State but also ethnic groups and communities within the State.⁸⁷ The African Commission has held that article 24 of the African Charter requires the State “to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.”⁸⁸ To comply with the spirit of Article 24 of the African Charter, States also need to order or at least permit independent scientific monitoring of threatened environments, require and publicise environmental and social impact studies prior to any major industrial development, undertake appropriate monitoring and provide information to those communities exposed to hazardous materials and activities and provide meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.⁸⁹

76. It is important to note also that the Protocol to the African Charter on rights of women in Africa (Maputo Protocol) guarantees women a right to a healthy and sustainable environment⁹⁰ as well as to sustainable development.⁹¹

The Arab Charter on Human Rights

77. The 2004 Revised Arab Charter on Human Rights (Arab Charter), which came into force in 2008 and has been ratified by 16 of the 22 members of the League of Arab States (LAS),⁹² guarantees the right to a healthy environment.⁹³ Moreover, it obliges States to take measures to combat environmental pollution.⁹⁴

The Inter-American System for the Protection of Human Rights

78. The American Convention on Human Rights does not explicitly contain the right to a healthy environment. However, this right was explicitly included in Article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) that was adopted in 1988 and entered into force in 1999:

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
2. The States Parties shall promote the protection, preservation, and improvement of the environment.

⁸⁷ Communication 155/96, ACHPR/COMM/A044/1 of 27 May 2002, para. 49.

⁸⁸ See above, para. 52.

⁸⁹ See above, para. 53.

⁹⁰ Article 18 of the Maputo Protocol.

⁹¹ Article 19 of the Maputo Protocol.

⁹² See <http://lasportal.org/ar/humanrights/Committee/Pages/MemberCountries.aspx>.

⁹³ Article 38: „Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights.”

⁹⁴ Article 39: „The measures taken by States parties shall include the following: [...] (f) Combating environmental pollution and providing proper sanitation systems.

79. As the title indicates, the Protocol of San Salvador conceives of the right to live in a healthy environment as an economic, social and cultural right that is to be realized progressively and is dependent on available resources.⁹⁵ The progressive realisation of the rights contained in the Protocol of San Salvador is monitored through a State reporting system.⁹⁶ Individual applications are only possible with respect to two specific rights, which do not include the right to live in a healthy environment.⁹⁷

80. The Working Group on the Protocol of San Salvador, which examines State reports, has identified five State obligations inherent in the right to live in a healthy environment: (1) the duty to guarantee to everyone, without any discrimination, a healthy environment in which to live; (2) the duty to guarantee to everyone, without any discrimination, basic public services; (3) the duty to promote environmental protection; (4) the duty to promote environmental conservation; and (5) the duty to promote improvement of the environment.⁹⁸ It also established that the exercise of the right to live in a healthy environment must be governed by the criteria of availability, accessibility, sustainability, acceptability and adaptability,⁹⁹ as is the case of other economic, social and cultural rights.

81. In its Advisory Opinion OC-23/17 of 2017 (2017 Advisory Opinion) the Inter-American Court of Human Rights (IACtHR) held that the American Convention, despite its silence on the issue, includes a right to a healthy environment.¹⁰⁰ The IACtHR stated that the right to a healthy environment is protected as an economic, social and cultural right under Article 26 of the American Convention,¹⁰¹ thereby rendering the right justiciable. The IACtHR expressly recognized that the human right to a healthy environment, as thus protected, “has both an individual and collective connotation”.¹⁰² It also stressed that the right is autonomous, distinct from the environmental content of other rights such as the right to life and the right to personal integrity, in that it

“protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals. This means that it protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life or personal integrity, but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right.”¹⁰³

⁹⁵ See Article 1 of the Protocol of San Salvador: The States Parties to this Additional Protocol to the American Convention on Human Rights undertake to adopt the necessary measures, both domestically and through cooperation among states, especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol.

⁹⁶ See *ibid.* Article 19.

⁹⁷ *Ibid.*, Article 19 (6).

⁹⁸ “Progress Indicators: Second Group of Rights,” November 5, 2013, OEA/Ser.L/XXV.2.1, GT/PSS/doc.9/13, para. 26.

⁹⁹ See above, para. 29.

¹⁰⁰ IACtHR, Advisory Opinion OC-23/17 of 15 November 2017 requested by the Republic of Colombia – The Environment and Human Rights.

¹⁰¹ **Chapter III - Economic, Social, and Cultural Rights**

Article 26. Progressive Development

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

¹⁰² IACtHR, AO 23-2017, para. 59.

¹⁰³ See above, para. 62.

82. The Court also considered that the full enjoyment of human rights depends on a suitable environment and that there are some rights more susceptible to be impacted by environmental degradation, such as the right to life, personal integrity, health or property, or other rights whose exercise supports better environmental policy making, such as freedom of expression and association, information and right to an effective remedy.¹⁰⁴ In addition, the Court recognised that some groups that are already in a vulnerable situation will experience environmental degradation with greater force. Consequently, the IACtHR held that, based on standards of international human rights law,¹⁰⁵ “States are legally obliged to confront these vulnerabilities based on the principle of equality and non-discrimination”.¹⁰⁶

83. However, the IACtHR did not further elaborate the content of the new right. The main part of the opinion consists in a detailed analysis of environmental duties derived from the right to life and to personal integrity that had been requested by Colombia.

84. The inclusion of a right to a healthy environment in the economic, social and cultural rights of Article 26 was confirmed in the context of contentious proceedings in the case of *Lhaka Honhat*.¹⁰⁷ The case involved over ninety indigenous communities seeking recognition of their land ownership rights. The petition was prompted by various issues, including the construction of public works, exploitation of hydrocarbons, and the occurrence of illegal activities within their traditional territory.¹⁰⁸ The IACtHR found violations of the autonomous right to a healthy environment, as well as the rights to food, water, and cultural identity based on the case's facts.¹⁰⁹ Besides other remedies, the court explicitly ordered the State to address illegal logging, which, despite being an important step, was hindered by the IACtHR's exclusion of its implementation from judicial supervision. In addition, the IACtHR reaffirmed that the right to a healthy environment “constitutes a universal interest”, is “a fundamental right for the existence of humanity”, and is “an autonomous right”.¹¹⁰ The IACtHR repeated its findings from the 2017 Advisory Opinion and clarified the content of the right insofar as it held that the right includes an obligation to prevent environmental harm.¹¹¹ Relying on the customary international law principle of the duty of prevention, the Court pointed out that “States are bound to use all the means at their disposal to avoid activities under its jurisdiction causing significant harm to the environment.” The IACtHR listed the following as some of the measures that must be taken in relation to activities that could potentially cause harm: (i) regulation; (ii) supervision and monitoring; (iii) requirement and approval of environmental impact assessments; (iv) establishment of contingency plans, and (v) mitigation when environmental damage has occurred.¹¹²

¹⁰⁴ See above, para 64.

¹⁰⁵ Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, January 15, 2009, UN Doc. A/HRC/10/61, para. 42, and Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, February 1, 2016, UN Doc. A/HRC/31/52, para. 81.

¹⁰⁶ *Ibid.* para. 67.

¹⁰⁷ IACtHR, Case of the Indigenous Communities of the Lhaka Honhat Association v. Argentina, judgment of 6 February 2020, par. 202.

¹⁰⁸ *Ibid.* paras 2, 171, 186.

¹⁰⁹ *Ibid.* para. 289.

¹¹⁰ *Ibid.* para. 203.

¹¹¹ See above, para. 207 et seq.

¹¹² *Ibid.*

85. Certain issues do not yet seem to have been fully resolved in the IACtHR's practice, such as (i) the exact content and implications of the right; (ii) the balancing of the right against other rights enshrined under the American Convention; (iii) the implications of the IACtHR's approach that the right is both anthropocentric (as a right attaching to human beings) and ecocentric (as a right attaching to the environment and its elements); or (iv) the added value of the right when compared to the right to life and personal integrity.

86. The IACtHR may use the opportunity offered by pending cases¹¹³ and a recent request for an Advisory Opinion by Chile and Colombia on States' human rights obligations in the context of climate change to further elucidate the contours of the right to a healthy environment.¹¹⁴

Association of Southeast Asian Nations (ASEAN) Human Rights Declaration

87. The ASEAN Human Rights Declaration, adopted in 2012 by member States of the Association of Southeast Asian Nations, contains the right to a safe, clean and sustainable environment as part of the right to an adequate standard of living, without further elaboration as to its scope or implications.¹¹⁵ The Declaration is a soft law instrument that does not provide for a monitoring mechanism.

- b) The right to a healthy environment in multilateral environmental agreements (MEAs)

88. Two treaties recognise the right to a healthy environment in an indirect manner: the Aarhus Convention¹¹⁶ at the European level, and, more recently, the Escazú Agreement¹¹⁷ at the Latin American level. Both treaties regulate rights of access to environmental information, public participation in environmental decision-making, and access to justice in environmental matters, thereby "contributing" to the protection of the "right of every person of present and future generations to live in a clean environment".¹¹⁸ They are widely seen as codifying procedural components of the right to a clean environment.¹¹⁹ While the Aarhus Convention obliges States to ensure that environmental human rights defenders shall not be penalised, persecuted or harassed

¹¹³ In particular, *the Community of La Oroya v. Peru*, pending on decision by the IACtHR.

¹¹⁴ See joint advisory opinion request of Chile and Colombia, dated 9 January 2023, http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2023/20230109_18528_petition-1.pdf (unofficial translation).

¹¹⁵ Principle 28: "Every person has the right to an adequate standard of living for himself or herself and his or her family including: (...) f. The **right to a safe, clean and sustainable environment.**"

¹¹⁶ 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 2161 UNTS 447, 38 ILM 517 (1999).

¹¹⁷ 2018 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean; see, however, the understanding expressed by the United Kingdom of Great Britain and Northern Ireland upon signature and confirmed upon ratification that Article 1 is understood "to express an aspiration", rather than a right.

¹¹⁸ Article 1 Aarhus Convention: "**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."

Article 1 Escazú Agreement: "The objective of the present Agreement is to guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, and the creation and strengthening of capacities and cooperation, **contributing to the protection of the right of every person of present and future generations to live in a healthy environment** and to sustainable development."

¹¹⁹ See Peters, Clean and Healthy Environment, Right to, International Protection, MPEPIL, January 2021, para. 10.

in any way, the Escazú Agreement goes one step further by including specific rights of environmental human rights defenders.¹²⁰

89. Under Article 15 of the Aarhus Convention, communications alleging non-compliance by a state party with the Convention may be brought before the Compliance Committee by one or more members of the public.¹²¹ The communication may concern a specific case of a person's rights of access to information, public participation or access to justice being violated as a result of the alleged non-compliance of the Party concerned, or relate to a general failure by the Party concerned to implement, or to implement correctly, the provisions of the Convention. NGOs can submit communications to the Compliance Committee for its consideration like any other member of the public.¹²² According to para. 18 of the Annex to decision I/7, the members of the public submitting communications do not have to be affected by the non-compliance alleged – thus the Aarhus Convention system seems to allow *actio popularis*.¹²³ A similar regime is established under Article 18 of the Escazú Agreement,¹²⁴ which establishes the Committee to Support Implementation and Compliance as a subsidiary body of the Conference of the Parties to the Escazú Agreement. This Committee is of a consultative and transparent nature, non-adversarial, non-judicial and non-punitive.

¹²⁰ Escazú Agreement Article 9 - Human rights defenders in environmental matters

1. Each Party shall guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity.

2. Each Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights, taking into account its international obligations in the field of human rights, its constitutional principles and the basic concepts of its legal system.

3. Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement.

¹²¹ Article 15 Aarhus Convention, see also paragraphs 18 to 24 of the annex to decision I/7 of the first session of the Meeting of the Parties to the Aarhus Convention,

<https://unece.org/fileadmin/DAM/env/pp/documents/mop1/ece.mp.pp.2.add.8.e.pdf>.

¹²² https://unece.org/DAM/env/pp/Publications/Guide_to_the_Compliance_Committee__second_edition__2019_/English/Guide_to_the_Aarhus_Convention_Compliance_Committee_2019.pdf.

¹²³ Report of the first meeting of the Parties, Decision I/7, ECE/MP.PP/2/Add.8, para 18 “the expiry of twelve months from either the date of adoption of this decision or from the date of the entry into force of the Convention with respect to a Party, whichever is the later, communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Convention, unless that Party has notified the Depositary in writing by the end of the applicable period that it is unable to accept, for a period of not more than four years, the consideration of such communications by the Committee.”

¹²⁴ The Committee to Support Implementation and Compliance is a subsidiary body of the Conference of the Parties to the Escazú Agreement to promote the implementation of the Agreement and support Parties in that regard. It is of a consultative and transparent nature, non-adversarial, non-judicial and non-punitive. The rules relating to the structure and functions of the Committee were adopted at the first meeting of the Conference of the Parties; see further https://repositorio.cepal.org/bitstream/handle/11362/48347/3/S2200737_en.pdf.

c) The right to a healthy environment in resolutions of international organisations

90. The beginning of the debate on a right to a healthy environment in the UN political process is generally traced back to the Stockholm Declaration on Environment of 1972.¹²⁵ Subsequent UN Declarations and Summits, however, did not follow up and it was only in 2021 that a human right to a healthy environment was politically recognised at the level of the United Nations:¹²⁶ first in the Human Rights Council Resolution 48/13 of October 2021,¹²⁷ and subsequently in General Assembly Resolution 76/300 in July 2022.¹²⁸

United Nations Human Rights Council Resolution 48/13 of October 2021

91. The resolution recognises the right to a clean, healthy and sustainable environment as a human right that is “important for the enjoyment of human rights”, notes that it is “related to other rights and existing international law”¹²⁹ and affirms that the promotion of the right requires the full implementation of the multilateral environmental agreements under the principles of international environmental law.

92. The resolution in itself does not provide the response to all the questions that might arise from the recognition of the right, such as the nature of its relationship with other human rights. This makes it all the more important that existing human rights frameworks give further consideration to the matter and provide further clarity on the scope and implications of the right.

United Nations General Assembly Resolution 76/300 of July 2022

93. In its essential elements¹³⁰, the GA Resolution – co-sponsored by more than 100 States and adopted with 161 votes in favour to none against with eight abstentions – differs only marginally from the wording of the HRC Resolution. It is important to note, however, that in contrast to the latter, it does not specify that the human right to a clean, healthy and sustainable environment is important to the enjoyment of all human rights, rather it clearly states in paragraph 1 of its operative part the recognition of the right to a clean, healthy and sustainable environment as a human right thereby underlining that it is a stand-alone right.

94. The GA Resolution was accompanied by a number of explanations of votes. One Council of Europe member State noted that “there is no international consensus on the legal basis of the human right to a clean, healthy and sustainable environment”, that the right was recognized “without due consideration and a common understanding at an international level” of what the right comprises and expressed its understanding “that the right to a clean, healthy and sustainable environment derives from existing international economic and social rights law - as a component of the right to an adequate standard of living, or the right to the enjoyment of the highest attainable

¹²⁵ The Declaration states “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, ...”

¹²⁶ On the developments leading to the adoption of the resolutions in 2021 und 2022 see Peters, Clean and Healthy Environment, Right to, International Protection, Max Planck Encyclopedia of Public International Law (MPEPIL), January 2021.

¹²⁷ UN Doc. A/HRC/RES/48/13 of 18 October 2021 (HRC Resolution).

¹²⁸ UN Doc. A/RES/76/300 of 1 August 2022 (GA Resolution).

¹²⁹ HRC Resolution, 2.

¹³⁰ GA Resolution, 1 – 3.

standard of physical and mental health”.¹³¹ Another Council of Europe member State noted that “[p]olitical recognition does not have any legal effect” and that it would have liked to see “a reference to future discussions on a human right to a clean, healthy and sustainable environment”, and another that “the potential legal implications of the new right envisioned in the resolution remain to be determined”.¹³²

The Council of Europe

95. In Recommendation CM/Rec(2022)20, the Committee of Ministers calls on member States to

“reflect on the nature, content and implications of the right to a clean, healthy and sustainable environment and, on that basis, actively consider recognising at the national level this right as a human right that is important for the enjoyment of human rights and is related to other rights and existing international law”.

96. The Recommendation assumes the existence of the right, but does not explicitly recognise it, instead calling on the member States actively to consider doing so at national level. At the same time, it implies a need for further clarification of the right, by inviting States to reflect on its nature, content and implications. In other respects, Recommendation CM/Rec(2022)20 uses the same language as HRC Resolution 48/13 (rather than GA Resolution 76/300), since it was drafted after the former had been adopted but before the latter had.

d) Decisions adopted in the context of international environmental agreements

97. Since the recognition of the right to a clean, healthy and sustainable environment by the UN General Assembly, several outcome documents adopted by the Parties to international environment agreements have referred explicitly to this right.

98. In the Sharm el-Sheikh Implementation Plan adopted by consensus at the 27th Conference of the Parties to the UN Framework Convention on Climate Change (COP-27), the States reiterated their acknowledgement that “[p]arties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to a clean, healthy and sustainable environment [...]”.¹³³

99. Similarly, the Parties to the Convention on Biological Diversity (CBD) acknowledged explicitly the right in the Kunming-Montreal Global Biodiversity Framework adopted at the 15th Conference of the Parties to the CBD and stressed that the newly adopted framework should “follow a human rights-based approach respecting, protecting, promoting and fulfilling human rights”.¹³⁴

¹³¹ <https://www.gov.uk/government/speeches/explanation-of-vote-on-resolution-on-the-right-to-a-clean-healthy-and-sustainable-environment>

¹³² See the explanation of Norway and Poland on the Right to a Clean, Healthy and Sustainable Environment Resolution, <https://press.un.org/en/2022/ga12437.doc.htm>.

¹³³ Decision 1/CP.27: Sharm el-Sheikh Implementation Plan, Report of the Conference of the Parties on its twenty-seventh session, FCCC/CP/2022/10/Add.1, pp 8.

¹³⁴ Decision 1/COP.15: Kunming-Montreal Global biodiversity framework, CBD/COP/15/L.25, Annex, para. 14.

e) UN Special Rapporteurs' Framework Principles on Human Rights and the Environment

100. In 2018, the UN Special Rapporteur on human rights and the environment, John H. Knox, presented Framework Principles on Human Rights and the Environment (Framework Principles) which reflect “the application of existing human rights obligations in environmental context”.¹³⁵ The Framework Principles set out how States’ human rights obligations could relate to the enjoyment of the human right to a healthy environment. They are intended to help explain what the content of such a right could include.¹³⁶

101. The first two principles call on States to protect human rights by ensuring a healthy environment and, as a corollary, to respect human rights in order to ensure a healthy environment.¹³⁷ Thus, the Framework Principles highlight the interdependence of human rights and the protection of the environment.

102. The Framework Principles set out further linkages between human rights, as relating to the environment, and potential substantive elements of the right to a clean, healthy and sustainable environment, including (i) to respect and protect the rights to freedom of expression, association, and peaceful assembly in relation to environmental matters; (ii) to provide for environmental education and public awareness; (iii) to provide public access to environmental information; (iv) to require the prior assessment of the possible environmental and human rights impacts of proposed projects and policies; (v) to provide for and facilitate public participation in decision-making related to the environment; (vi) to provide for access to effective remedies for violations of human rights and domestic laws relating to the environment;¹³⁸ (vii) non-discrimination in relation to enjoyment of a healthy environment;¹³⁹ (viii) the maintenance of non-retrogressive substantive environmental measures in relation to the progressive realization of economic, social, and cultural rights;¹⁴⁰ (ix) the monitoring and effective enforcement of compliance with the standards by private actors as well as governmental authorities;¹⁴¹ (x) internal cooperation with respect to global or transboundary environmental harm that adversely affects human rights;¹⁴² and (xi) the protection of the rights of those who are particularly vulnerable to environmental harm, including environmental human rights defenders and indigenous peoples.¹⁴³ In addition, the Framework Principles suggest that States should fulfill their human rights obligations when pursuing sustainable development.¹⁴⁴

f) The right to a healthy environment in other soft law documents

103. In its General Comment No. 26 on children’s rights and the environment, with a special focus on climate change (see above), the UN Committee on the Rights of the Child observes that “[a] clean, healthy and sustainable environment is both a human right itself and necessary for the

¹³⁵ 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.

¹³⁶ Extended summary, Knox, Expert contribution, p. 27.

¹³⁷ Ibid. paras 4-6 (Framework Principles 1-2).

¹³⁸ Ibid, paras 10-30 (Framework Principles 5-10).

¹³⁹ Ibid. paras 7-9 (Framework Principle 3)

¹⁴⁰ Ibid. paras 31-33 (Framework Principle 11)

¹⁴¹ Ibid, paras. 34-35 (Framework Principle 12).

¹⁴² Ibid, paras. 36-39 (Framework Principle 13).

¹⁴³ Ibid, paras. 10-11, 40-53 (Framework Principles 4, 14, 15).

¹⁴⁴ Ibid. Paras 54-55 (Framework Principle 6).

full enjoyment of a broad range of children’s rights¹⁴⁵, which echoes the wording of UN HRC Resolution 48/13. It also takes note of “the recognition of the right [...] in international agreements, the jurisprudence of regional and national courts, national constitutions, laws and policies by a vast majority of States”.¹⁴⁶ It then affirms that “[c]hildren have the right to a clean, healthy and sustainable environment”, which is “implicit” in the CRC and “directly linked” to other rights¹⁴⁷; wording that recalls the position in both Resolution 48/13 and UNGA Resolution 76/300.

104. The General Comment, having earlier referred to the work of the UN Special Rapporteur, then sets out substantive elements of the right, including “clean air, a safe and stable climate, healthy ecosystems and biodiversity, safe and sufficient water, healthy and sustainable food and non-toxic environments”.¹⁴⁸ On this basis, the Committee considers that States should immediately take certain specific actions towards the realisation of this right for children.¹⁴⁹ The General Comment also underlines the importance of procedural elements of the right, including access to information, participation in decision making and child-friendly access to justice with effective remedies, and calls on States to incorporate children’s right to a clean, healthy and sustainable environment into their national legislation and take adequate measures to implement it.¹⁵⁰

105. In Section IV on general measures of implementation, the Committee considers that “States must take deliberate, specific and targeted steps towards achieving the full and effective enjoyment of children’s rights related to the environment, including their right to a healthy environment”.¹⁵¹ One may assume that the Committee, having recalled that “children have the right to a clean, healthy and sustainable environment”, intends other implementation measures also to apply to the right to a healthy environment. These measures would include child rights impact assessments, the obligation to protect against the abuse of child rights by third parties, including business enterprises, access to justice, and international cooperation. The General Comment gives further details of such measures.

106. General Comments are soft law instruments, as they are not binding on States parties.¹⁵² Their function is to assist with the implementation of the relevant treaty, clarifying duties of the parties with respect to certain provisions and suggesting approaches to implementation of treaty provisions. They can be regarded as prescriptive legal instruments which seek to influence discourse on human rights and, by implication, normative development. General Comment No. 26 is thus important for the identification of the material scope of the right to a healthy environment.

g) The right to a healthy environment in national law of Council of Europe member States

107. The following section describes the state of national laws with respect to the right of a healthy environment on the basis of the answers to a questionnaire addressed by the expert group to member States. The questionnaire asked: (i) is some explicit form of human right to a healthy

¹⁴⁵ UN Committee on the Rights of the Child, CRC/C/GC/26, para 8.

¹⁴⁶ Ibid. para 10.

¹⁴⁷ Ibid. para 63.

¹⁴⁸ Ibid. para 64.

¹⁴⁹ Ibid. para 65.

¹⁵⁰ Ibid. para 66.

¹⁵¹ Ibid. para 71.

¹⁵² For the nature and purpose of the general comments, see Official Records of the UN General Assembly, Thirty sixth Session, Supplement No. 40 (A/36/40), annex VII, introduction.

environment protected under the constitution, legislation or jurisprudence, and if so in what terms; (ii) is the right justiciable, and, if so, on what conditions; and (iii) what, if anything, have the domestic courts said about this right in their caselaw?

108. To the first question, 20 member States answered in the positive, with 7 member States (Austria, Denmark, Estonia, Germany, Sweden, Switzerland and the UK) answering in the negative. To the second question, 16 member States have answered in the positive with 11 member States (Armenia, Austria, Belgium, Denmark, Estonia, Germany, Malta, the Netherlands, Sweden, Switzerland and the UK) answering in the negative. To the third question, 19 member States have answered in the positive by providing examples with 8 (Andorra, Armenia, Denmark, Estonia, Malta, the Netherlands, Sweden and the UK) answering in the negative.

109. Due to the limited number of replies and the resulting limitations of a comparative analysis thereof, this survey does not draw an exhaustive picture. Rather, it provides a broad overview and identifies general trends.

110. The right to a healthy environment is recognised at national level as a human/ fundamental right in multiple Council of Europe member States. These member States mostly mention the protection of the environment in the human rights section of their constitutional texts and thus formally recognise it as a fundamental right. Most member States define the scope of the right by including a reference to human well-being and/or human quality of life in the relative provisions. The most common wording for the illustration of this link of environmental protection to the individual is the guarantee of a “healthy environment” or an environment “favorable/ conducive to health”. Other member States use attributes such as “benevolent” or “habitable” in relation to the environment and “decent” or “enjoyable” in relation to the quality of life. Right holders are always human beings; no member State defines the environment or nature itself as a legal subject entitled to protection.

111. Most of the human rights provisions on the environment are rather vague about the content of the right to a healthy environment, leaving the subject to legislative or judicial concretization. Some member States, however, provide more details on the protected environmental goods. In almost all member States, the Supreme and/ or Constitutional Courts play an important role in applying and developing the right to a healthy environment.

112. All member States that responded to the questionnaire conceive the obligations on States inherent in the right to a healthy environment as not being limited to the negative obligation to refrain from harmful action. The positive obligation to protect the right against interference by other actors is recognized everywhere. In addition, some member States have recognised a positive obligation to protect the environment, in the sense of positively ensuring and creating conditions for a healthy environment. All member States leave a margin of appreciation to the legislator in deciding on the means used to fulfill their obligations.

113. The answers to the questionnaire do not allow one to draw conclusions on the extent to which the right to a healthy environment is considered to be relevant to cases concerning the direct impact of the triple planetary crisis. National courts in at least one member State seem to consider the right to a healthy environment as being engaged in cases concerning the triple planetary crisis even if no specific consequences for individuals are derived.¹⁵³

¹⁵³ The Portuguese Supremo Tribunal de Justiça for example established that the constitutional right to a “healthy environment” also includes the conservation of biodiversity.

114. Most member States provide for rights of access to environmental information, public participation in environmental decision-making, and access to justice in environmental matters as a result of their ratification of the Aarhus Convention.

115. It is to be noted that a number of member States that do not recognize a human right to a healthy environment have codified environmental protection as a constitutional principle or objective. These States describe the maintenance of a healthy environment as an objective for the national well-being, which, by virtue of the relevant constitutional provisions, must be promoted and taken into consideration in the relevant legislative, administrative and judicial decision-making processes. Some constitutions even accord primacy of environmental protection over other (constitutional) principles¹⁵⁴ or otherwise visibly prioritise environmental protection as a leading principle within their national constitutional framework. As is the case with a fundamental right to a healthy environment, this objective guarantee of environmental protection is open to judicial interpretation and is, as demonstrated by the answers to the questionnaire, effectively shaped in the jurisprudence of the domestic courts. Member States that follow this objective model of environmental protection have reported on substantial jurisprudential evolutions. The combination of traditional fundamental/ human rights with a constitutional principle of environmental protection generates results that are usually associated with the human right to a healthy environment.¹⁵⁵

h) Conclusion

116. At this point in time, while there is no doubt that the right to a healthy environment is recognised as a justiciable right in several regional human rights systems, its nature, content and implications under international law generally, are not yet clearly defined. The preeminent importance of courts in shaping the contours of the new right is a cross-cutting feature in all jurisdictions examined.

ii. Justiciability of the right to a healthy environment

117. As noted above, the right to a healthy environment is recognised as a justiciable right in several regional human rights systems (see paragraphs 73 – 87).

118. At the national level, in most member States that provide for the right to a healthy environment as a human right in their national law, the right is justiciable in the same way as other human rights. This means that notably the admission of annulment actions against administrative decisions and – if generally permitted in the domestic judicial system – the constitutional review of legislative acts is possible. Some member States give a right of action to non-governmental organisations and/or local and regional public territorial bodies¹⁵⁶, others provide for the possibility of *actio popularis*¹⁵⁷. Other member States which recognize the right to a healthy environment in their national law, however, do not conceive of the right as being justiciable.

¹⁵⁴ The Croatian Constitution for example in its Article 3 ranks the protection of the environment among „the highest values of the constitutional order of the Republic“ and declares it a „basis for interpreting the Constitution.“

¹⁵⁵ The German Federal Constitutional Court for example has derived a doctrine of so-called intergenerational equality from the objective to environmental protection in Art. 20a of the German Basic Law that is justiciable under the traditional fundamental rights guarantees.

¹⁵⁶ Estonia, Norway, Poland, Slovak Republic.

¹⁵⁷ Latvia and Portugal.

D. Possible rationales for a further instrument or instruments

119. The following section sets out possible rationales for a new instrument on human rights and the environment and analyses their underlying assumptions.

i. Addressing gaps in member States' international legal obligations

a) Gaps in international human rights law

120. One line of argumentation focuses on gaps in the human rights system and in particular the system of the Convention and the Charter.

The European Convention on Human Rights

121. The current jurisprudence of the Court and the procedural and material requirements that need to be met when litigating human rights cases before the Court may establish complex obstacles in environmental cases. Very often, an emphasis is being made here as well on climate change litigation which is seen to be different in nature from the more traditional environmental cases the ECtHR has decided so far: “[c]laims in relation to climate change are much more complex in terms of causes and effects, indeterminate in terms of individualised harm, and unclear as to the possible measures to be adopted.”¹⁵⁸

122. The following are perceived as limitations of the Convention system as a means to address the human rights impact of the triple planetary crisis:

- According to Article 1 of the Convention a State’s jurisdiction within the meaning of Article 1 is primarily territorial. Consequently, the victim of an alleged Convention violation needs to be within a member State’s territorial jurisdiction. This occurs primarily where the victim is within the territory of the State.¹⁵⁹ Exceptionally, extraterritorial jurisdiction may be established if the victim is outside of a State’s territory, but under the State’s authority and control. Cases of transboundary harm and climate change typically pose extraterritoriality problems as the pollution originates in one State but impacts individuals in another state.¹⁶⁰ There is no territorial control and no jurisdiction under the personal heading of extraterritorial jurisdiction or other bases of jurisdiction on the basis of the established jurisprudence of the Court. Problems of admissibility on account of failure to establish jurisdiction are therefore deplored.¹⁶¹ There have been developments of the Court’s jurisprudence on jurisdiction,¹⁶² but so far, unlike the UN Committee on the Rights of the Child and the IACtHR¹⁶³, the Court has not accepted control over the source of a harm as capable of establishing jurisdiction under Article 1.
- Article 34 of the ECHR excludes from the Court’s jurisdiction any *actio popularis*, that is to say, any public-interest applications that would not have any bearing on the applicant’s

¹⁵⁸ *Ibid.*, 1, 3.

¹⁵⁹ *Ukraine v. Russia* (re Crimea) (dec.) [GC], 2020, § 345).

¹⁶⁰ Extended summary, Raible, Expert contribution, p. 34.

¹⁶¹ Extended summary, Raible, Expert contribution, p. 35.

¹⁶² *Carter v. Russia*, application no. 20914/07, judgment of 21 September 2021; *Georgia v. Russia* (II) application no. 38263/08, Grand Chamber judgment of 21 January 2021; *Ukraine and The Netherlands v. Russia*, applications nos. 8019/16, 43800/14 and 28525/20, Grand Chamber decision of 30 November 2022.

¹⁶³ AO23/2017.

individual rights. At present, an applicant must claim to have been the victim of a violation of a right protected under the Convention or its Protocols.

- Non-governmental organisations may only bring applications in their own name, as long as they are themselves negatively affected by the measure which is the object of the application.¹⁶⁴
- As to the issue of future generations, under the current normative framework, the Court only has the discretion to accept the standing of a person who acts on behalf of a direct or indirect victim of an alleged violation.¹⁶⁵ In contrast, outside of the Convention system, future generations' interests have been protected by institutions like the Hungarian Ombudsperson for Future Generations, who is permitted by local law to initiate or participate in legal procedures.¹⁶⁶ It is argued that such protection would be needed as the effects of the triple planetary crisis risk the future impairments of fundamental rights.
- The requirement to exhaust domestic remedies, an expression of the principle of subsidiarity, has been disputed by applicants in climate change cases related to human rights and the environment as a procedural obstacle.¹⁶⁷ As global climate change by its very nature is caused by the acts or omissions of a multitude of States, applicants in cases such as *Duarte Agostinho and others v Portugal and others* argue that an application should be brought against a multitude of States if it is to lead to a practically effective outcome. The need to exhaust local remedies in each of these States – an issue which is also being examined by the Court in the cases currently before it – is argued to be time-consuming and costly.
- The fact that in order to succeed, applicants need to show that environmental degradation directly affects their Convention rights can also be seen as a limitation under the Convention. The case of *Kyrtatos* highlights this gap: in 2003, the Court rejected claims arising from the destruction of a wetland adjacent to the property of the applicants, on the ground that “neither Article 8 nor any of the other Articles of the Convention are specifically designed to provide general protection of the environment as such.”¹⁶⁸ The Court stated, “even assuming that the environment has been severely damaged by the urban development of the area, the applicants have not brought forward any convincing arguments showing that the alleged damage to the birds and other protected species living in the swamp was of such a nature as to directly affect their own rights.”¹⁶⁹ It is argued that binding recognition of the right to a healthy environment would establish the linkage between human beings and natural protection that the *Kyrtatos* decision failed to find¹⁷⁰ and would make possible, at least in principle, for claims to be brought for substantial environmental harm that affected the applicants.

¹⁶⁴ There are exceptions, however, see *Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania*, application no. 47848/08, Grand Chamber judgment of 17 July 2014., § 104 et seq.

¹⁶⁵ Câmpeanu, § 103

¹⁶⁶ The office of Ombudsman for Future Generations was created by the Hungarian Parliament in 2007, see <https://www.ajbh.hu/web/ajbh-en/the-role-of-the-ombudsman>

¹⁶⁷ Keller/Pershing, *Climate Change in Court: Overcoming Procedural Hurdles in Transboundary Environmental Cases*, ECHRL 2022, 23, 34.

¹⁶⁸ *Kyrtatos v Greece*, application no. 41666/98, judgment of 22 May 2003, § 52.

¹⁶⁹ *Ibid.* para. 53.

¹⁷⁰ Extended Summary, Knox, expert contribution, p. 27.

- Another complicating factor argued by some authors is the assumed impossibility of establishing cause and effect when it comes to environmental implications of climate change.¹⁷¹ A human rights-based approach to establishing liability for harm purportedly caused by climate change has been criticized on account of the difficulties associated with establishing a chain of causation between the act or omission of a state on the one hand, and the infringement of a right suffered by a specific victim or group, on the other.¹⁷² It has been pointed out that the establishment of legal causation is made particularly challenging by the diffuse nature of greenhouse gas emissions, the indirect nature of many of climate change's impacts on humanity, and, crucially, the scientific uncertainty associated with definitively linking any meteorological event to climate change.¹⁷³ In order for a human right to a healthy environment to be efficient in cases concerning consequences of climate change, it might be necessary to consider how causation, foreseeability and uncertainty can be effectively addressed.
- Experts also posit that the Court's limited power to order individual or general measures is also considered as an obstacle.¹⁷⁴ While the payment of just satisfaction is adequate to compensate for individual harm resulting from environmental damage, remedial measures of a general nature may be required to put an end to structural environmental problems. Although the Court does occasionally indicate general measures that should be taken in execution of a judgment, in general the choice of measures required to ensure full implementation of a judgment falls to the respondent State, subject to the supervision of the Committee of Ministers under Article 46 of the Convention.
- It is also argued that the precautionary principle and other principles of international environmental law do not play a significant role in the Court's jurisprudence.¹⁷⁵ While the Court has emphasized the importance of the precautionary principle in *Tatar*¹⁷⁶, in newer cases the Court has not developed further its use of the precautionary principle.
- Given that the Convention system does not recognise a right to a healthy environment, only "indisputable" environmental "imperatives" can, in principle, justify interference with certain individual rights and freedoms (for example, right to respect for private life or right to property). Under the Convention and its Protocols, interference with certain rights may be justified if it is necessary in a democratic society "for the protection of the rights and freedoms of others". In assessing whether a fair balance has been struck between competing interests of the individual and of the community as a whole, the Court distinguishes between the "rights and freedoms" that are guaranteed by the Convention or its Protocols and those that are not. Pursuant to a well-established principle, where the "rights and freedoms" are guaranteed by the Convention or its Protocols, it must be accepted that the need to protect them may lead States to restrict other rights or freedoms likewise set forth in the Convention, and Contracting States must have a broad margin of

¹⁷¹ Fanny Thornton, *The Absurdity of Relying on Human Rights Law to Go After Emitters, Debating Climate Law and Intergovernmental Panel on Climate Change*, 2022.

¹⁷² Rendering International Human Rights Law Fit for Purpose on Climate Change Human Rights Law Review, Volume 23, Issue 1, March 2023, *Climate Change and Human Rights: Amicable or Arrested Development?* (2010) 1 *Journal of Human Rights and the Environment*.

¹⁷³ *Ibid.*

¹⁷⁴ Extended summary, Keller, Expert contribution, p. 3.; Lambert, Expert contribution, p. 4; Moutquin, Expert contribution p. 56; Keller/Heri/Piskóty, *Something Ventured, Nothing Gained? – Remedies before the ECtHR and Their Potential for Climate Change Cases*, *Human Rights Law Review* 2022, 1 et seq.

¹⁷⁵ Extended summary, Keller, Expert contribution, p. 5.

¹⁷⁶ *Tătar v. Romania*, no. 67021/01, judgment of 27 January 2009, § 120.

appreciation in this respect. Instead, where restrictions are imposed on a right or freedom guaranteed by the Convention in order to protect “rights and freedoms” not, as such, enunciated in the Convention or protocols, only indisputable imperatives can justify interference with enjoyment of a Convention right.¹⁷⁷

- It is further argued that the Convention does not provide sufficient protection to environmental human rights defenders, who are a particularly -high-risk group of human rights defenders.¹⁷⁸ While member States of the Council of Europe have made important efforts to protect environmental human rights defenders in recent years, especially in the context of the Aarhus Convention,¹⁷⁹ these efforts are seen by some as insufficient. It is considered that the recognition of the right to a healthy environment in an Additional Protocol to the Convention would ensure that environmental human rights defenders are considered as defenders of a right that stands on an equal footing with all the other rights legally recognized in the European human rights system - putting an end to attempts to delegitimize and isolate environmental human rights defenders with suggestions that they are acting contrary to other important rights and collective interests.

123. In essence, many of these obstacles may be traced back to the nature of the Convention as a human rights treaty that centers around individual justice and is limited to civil and political rights. They illustrate the fact that, in its current form, the Convention system is not an adequate forum to litigate issues of environmental justice more generally.

The European Social Charter

124. The Charter does not explicitly contain a right to a healthy environment. Nevertheless, as explained above, the ESCR has engaged with the issue of environmental protection and social rights, both within its periodical reporting procedure and in decisions on collective complaints against States Parties about alleged failures to give effect to the Charter adequately.

125. The most relevant provision of the Charter for the protection of the environment is Article 11 (right to protection of health). Under the Charter, the right to protection of health includes the right to a healthy environment. Within the periodical reporting procedure, the ECSR has examined compliance of States Parties’ law and practice with Article 11 concerning environmental risks in relation to air, water, soil and noise pollution, waste management, ionising radiation, asbestos

¹⁷⁷ *Chassagnou and others v. France*, app. nos. 25088/94 28331/95 28443/95, GC judgment of 29 April 1999, § 113

¹⁷⁸ Special Rapporteur on the situation of human rights defenders, 24 December 2020, UN Doc. No. A/HRC/46/35, at para. 5.

¹⁷⁹ Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted on June 25, 1998 – entered into force on October 30, 2001, 2161 UNTS 447, 38 ILM 517 (1999). See also the establishment, in October 2021, of a rapid response mechanism for environmental defenders, and the election, in June 2022, of Michel Forst as the first Special Rapporteur on environmental defenders under the Aarhus Convention. See Meeting of the Parties to the Aarhus Convention, *Decision VII/9 on a rapid response mechanism to deal with cases related to article 3(8) of the Convention on access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*, October 2021, UN Doc. No. ECE/MP.PP/2021/2/Add.1; see also Article 3(8) of the Aarhus Convention, stating that “Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings;” see also Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, *Report of the third extraordinary session of the Meeting of the Parties*, June 2022, ECE/MP.PP/2022/2. See also UNECE, *World’s first Special Rapporteur on environmental defenders elected under the Aarhus Convention*, 24 July 2022, available at <https://unece.org/environment/press/worlds-first-special-rapporteur-environmental-defenders-elected-under-aarhus>.

etc.¹⁸⁰ As noted above, however, there are relatively few decisions on collective complaints on the scope and application of Article 11 of the Charter for the purpose of the protection of the environment. So far, only two complaints have been lodged with the ECSR regarding the right to a healthy environment under Article 11, both concerning Greece.¹⁸¹ This paucity of decisions on the matter may be attributable, among other things, to the limited number of ratifications of the 1995 Additional Protocol to the Charter,¹⁸² which provides for the collective complaints mechanism, as well as a wider lack of awareness of the collective complaints procedure.

126. The protection offered by the Charter is furthermore limited by the restriction on its personal scope. According to the Appendix to the Charter,¹⁸³ the States Parties are not obliged to apply the provisions of the Charter to persons who are not nationals of other States Parties to the Charter or to those who do not regularly work or legally reside in the territories of the States Parties. This constraint limits the potential of the Charter to address recurrent issues of environmental protection such as transboundary harm. However, the ECSR has considered, for example, that the restriction on the personal scope should not be read in such a way as to deprive foreigners coming within the category of irregularly present migrants of the protection of the most basic rights enshrined in the Charter or to impair their fundamental rights such as the right to life or to physical integrity or the right to human dignity.¹⁸⁴

ii. Gaps with respect to the international responsibilities of private actors for the environmental impact of their activities

127. Another argument relating to gaps in international legal standards concerns the international responsibilities of private actors for the environmental impact of their activities.¹⁸⁵ Most environmental pollution, greenhouse gas emissions and loss of biodiversity is caused by private actors. To effectively fight against environmental degradation and the triple planetary crisis, the involvement of private actors is key. Standards applicable to States need to be translated into concrete obligations for private entities. International due diligence standards with respect to the environment, however, are not yet firmly anchored in international law. The reference document for the issue of business and human rights, the United Nations Guiding Principles on Business and Human Rights (UNGPs), establishes corporate responsibility to respect human rights and highlights States' duty to protect individuals against human rights abuse within their territory by business enterprises. But this document lacks specific and explicit measures relating to environmental issues. These are only covered insofar as environmental issues are human rights issues. The OECD Guidelines for Multinational Enterprises as well as the OECD Due Diligence Guidances on Responsible Business Conduct, by contrast, are broader and include environmental aspects.

128. Some of the due diligence legislation that has been or is being adopted in member States and the European Union goes beyond the UNGPs and explicitly incorporates certain environmental aspects into their due diligence obligations without establishing a link to human rights. The UNGPs

¹⁸⁰ ECSR, Conclusions 2021, 2017, 2013, 2009, 2005 and 2003 on Article 11§ 3

¹⁸¹ *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint No. 30/2005, decision on the merits of 6 December 2006; *International Federation of Human Rights Leagues (FIDH) v. Greece*, Complaint No. 72/2011, decision on the merits of 23 January 2013.

¹⁸² To date only 16 States have ratified the Additional Protocol of 1995.

¹⁸³ Appendix to the European Social Charter (Revised), CETS 163, § 1.

¹⁸⁴ *International Federation of Human Rights Leagues v. France*, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 30 and 31; *Defence for Children International v. the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009, §19

¹⁸⁵ Extended summary, Lambert, Expert contribution, p. 46.

+10 Roadmap¹⁸⁶ conceives the UNGP as a compass for meeting global challenges, such as just transition and sustainable development, and refers in this context to the Human Rights Council's recognition of the human right to a clean, healthy and sustainable environment. The human right to a healthy environment is thus seen as crucial for integrating environmental concerns in the business and human rights regime.

129. The development of binding environmental due diligence standards for business enterprises – whether conceived as environmental due diligence or as human rights due diligence taking into account environmental issues through the human right to a healthy environment is still at its beginnings. A lot of work remains to be done, in particular with respect to access to remedies for environmental human rights violations caused by private actors. An international forum that could provide victims of corporate environmental human rights violations with access to a remedy such as a judicial remedy, mediation procedure or other form of alternative dispute resolution does not yet exist. This gap, it has been argued, could be closed by a further Council of Europe instrument.¹⁸⁷

iii. Shaping the content of the right to a healthy environment

130. Given the character of the right to a healthy environment as a developing right, a rationale for a new instrument could be seen in the possibility for member States to shape the right proactively by defining its contours and content as well as its relationship with other human rights for the Council of Europe legal space. This would not only increase legal certainty in the Council of Europe, but it would also allow member States to contribute to the further development of the right in general international law.

iv. Encouraging the development of an environment-friendly jurisprudence

131. Some argue that the lack of a clear normative framework for the Court or the ECSR to tackle environmental issues is an obstacle to the development of an environment-friendly human rights jurisprudence, in particular with respect to the triple planetary crisis.¹⁸⁸

132. This lack is also held responsible for the fact that the Court allegedly gives less importance to environmental protection in comparison with other public interests such as the economic well-being of the country.¹⁸⁹ In a nutshell, this rationale for a new instrument centres on providing legitimacy for the development of the Court's jurisprudence and the decisions and conclusions of the ECSR on environmental protection.

v. Enhancing protection for environmental human rights defenders

133. In addition, a new instrument on human rights and the environment could enhance protection for environmental human rights defenders.

¹⁸⁶<https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf>

¹⁸⁷ Extended summary, Lambert, Expert contribution, p. 45.

¹⁸⁸ Eicke, Climate Change and the Convention: Beyond Admissibility, ECHRL 2022, 8, 12.

¹⁸⁹ Extended summary, Keller, Expert contribution, p. 3 with reference to *Greenpeace e.V. and others v Germany*, application no. 18215/06, judgment of 12 May 2009; Pedersen, Any Role for the ECHR when it Comes to Climate Change?, ECHRL 2022, 17, 20 et seq.

134. Environmental human rights defenders are a particularly high-risk group of human rights defenders in the world.¹⁹⁰ They should be recognised as human rights defenders and, by extension, afforded the same level of protection.

vi. Improving national protection of the right to a clean, healthy and sustainable environment

135. Another rationale for a new instrument on human rights and the environment could be as a signal to member States to undertake greater efforts at environmental protection, conservation and restoration and mitigation of and adaption to climate change.¹⁹¹ According to the study of the UN Special Rapporteur on Human Rights and the environment, introduction of the right to a healthy environment in national constitutions results in States having smaller ecological footprints, ranking higher on comprehensive indices of environmental indicators and making faster progress in reducing harmful emissions.¹⁹² A new instrument on human rights and the environment could encourage States that have not yet adopted the right to do so and encourage those States that have already adopted the right to take further active measures to implement it.¹⁹³

136. In addition, in line with the recommendations under CM Rec 2022(20), a new instrument could clarify the understanding amongst Council of Europe member States of the scope and content of the right to a healthy environment and inspire corresponding national legislation. That legislation would define the ways in which States would meet the clearly defined international standard, in accordance with the principle of subsidiarity.¹⁹⁴

vii. Establishing the Council of Europe's role

137. The future relevance of the Council of Europe will be greatly enhanced by demonstrating its capacity to address the triple planetary crisis. Failure to explicitly address the environmental dimension of human rights risks giving the impression that the Council of Europe is absent on this critical issue. Leadership by the Council of Europe can be expected to reap benefits not only within Europe, but also beyond.

¹⁹⁰ Global Witness publishes an annual report on the number of killings of environmental defenders. The most recent report, entitled *Last line of Defence*, was published in September 2021 and is available at https://www.globalwitness.org/documents/20191/Last_line_of_defence_-_high_res_-_September_2021.pdf.

¹⁹¹ *Pavlov and others v. Russia*, application no. 31612/09, judgment of 11 October 2022, Concurring opinion of Judge Serghides, § 21.

¹⁹² David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (2012), pp. 253-277.

¹⁹³ Extended Summary, Knox, Expert contribution, p 26.

¹⁹⁴ CMRec 2022(20) para 1. „Recommends that the governments of the member States reflect on the nature, content and implications of the right to a clean, healthy and sustainable environment and, on that basis, actively consider recognising at the national level this right as a human right that is important for the enjoyment of human rights and is related to other rights and existing international law”

III. The feasibility of a further instrument or instruments

138. The following section sets out different Council of Europe instruments that have been proposed to address the linkages between human rights and the environment. The proposals reflected here emanate from organs of the Council of Europe, experts heard by the working group and discussions within the working group. For each instrument, the report briefly examines its possible material content. It also sets out which of the rationales identified in Section II would be covered by the respective instrument in order to allow the narrowing down of options depending on the rationales member States consider particularly relevant. Finally, arguments for and against each of the instruments are compiled as they have been put forward in the discussions. The compilation does not imply an endorsement of any argument by member States. It aims to give an overview of the state of discussions and is intended to provide a meaningful basis for a political decision on the need and feasibility of a further instrument or instruments on human rights and the environment.

1. Additional Protocol to the European Convention on Human Rights

139. To address the linkages between human rights and the environment, an Additional Protocol to the European Convention on Human Rights codifying the human right to a clean, healthy and sustainable environment has been proposed.

a) Possible content

140. Whereas the common denominator of proposals made in this respect is the codification of the human right to a clean, healthy and sustainable environment, proposals vary to the extent to which they consider the necessity of additional elements relating to admissibility requirements, right holders, etc. The additional elements proposed to fill the gaps of the current ECHR system include 1) provisions on the administration of evidence to ease the burden of proof on applicants,¹⁹⁵ 2) the recognition of NGO standing¹⁹⁶, 3) a codification of the precautionary principle¹⁹⁷, 4) specific protection for human rights defenders¹⁹⁸, 5) a provision amending article 1 ECHR to extend the territorial reach of the Protocol.¹⁹⁹

b) Covered rationales

✓ Addressing gaps in international human rights law

An Additional Protocol would contain a legally binding codification of the right to a clean, healthy and sustainable environment and would provide individuals with a monitoring mechanism capable of issuing binding decisions with respect to the right to a healthy environment. It would provide the Court with a standard that would remedy at least to a certain extent the limits of existing Convention rights in environmental matters. The extent to which alleged protection gaps would be closed depends on the content of the Additional Protocol. One of the main questions that would need to be answered with respect to admissibility issues is whether an Additional Protocol should deviate from existing Convention standards by including *lex specialis* rules on *inter alia* jurisdiction, the victim requirement, the need to exhaust local remedies and the Court's remedial powers. With respect to the substantive scope of protection, the extent to which the precautionary principle and other principles of international environmental law as well as the protection of environmental human rights defenders and future generations would play a role in the Court's jurisprudence would need to be ascertained.

¹⁹⁵ Extended summary, Keller, Expert contribution, p. 4-6.

¹⁹⁶ Ibid. p. 6-77.

¹⁹⁷ Ibid. p. 5.

¹⁹⁸ Extended summary, Duyck, Expert contribution p. 14.

¹⁹⁹ Extended summary, Raible, Expert contribution p. 35-36.

This could be decided by the ECtHR unless member States include provisions in the Additional Protocol in that respect. The latter approach, however, would deviate from the approach used in other Additional Protocols to the Convention which limit themselves to stating rights in generic terms.

✗ **Addressing gaps with respect to the international responsibilities of private actors**

As the Convention imposes human rights obligations on States, an Additional Protocol would not contain obligations for private entities and therefore would not address the alleged gaps in the responsibility of private actors even though, through positive obligations, as an indirect effect, States could be held responsible for the omissions of private actors within their jurisdiction thereby being forced to address gaps with respect to the responsibilities of private actors.

✓ **Shaping the content of the right to a healthy environment**

An Additional Protocol to the ECHR would primarily allow the Court to contribute to developing a common understanding on the content of the right to a healthy environment through its jurisprudence. Member States, on the other hand, could actively shape the understanding of the right by defining its content in more detail in the Additional Protocol.

✓ **Encouraging the development of an environment-friendly jurisprudence**

An Additional Protocol provides the strongest possible legitimacy for the progressive development of the Court's jurisprudence in environmental matters.

✓ **Enhancing the protection for environmental human rights defenders**

Recognition would clarify that the right to a healthy environment is on the same level as other human rights, thereby recognising environmental human rights defenders as human rights defenders and, by extension, affording them the same level of protection. In addition, the Additional Protocol could include specific provisions on environmental human rights defenders.

✓ **Improving national protection of the right to a healthy environment**

An Additional Protocol could work as a pull-factor in increasing the level of environmental protection in member States. A new instrument on human rights and the environment could encourage States that have not yet adopted the right to do so and encourage those States that have already adopted the right to take further active measures to implement it.

✓ **Establishing the Council of Europe's role**

An Additional Protocol would affirm the leading role of the Council of Europe in the area of human rights by being the first international organisation to meet the challenges posed by the triple planetary crisis with a binding human rights instrument.

c) Arguments for an Additional Protocol

- + An Additional Protocol to the Convention allows individuals access to the most effective regional human rights mechanism to enforce their right to a healthy environment. Depending on the formulation, collective interests may also be protected by allowing for NGO standing, thereby improving access to justice concerning collective interests in environmental matters.
- + A binding codification of the right to a healthy environment combined with a monitoring mechanism able to issue binding decisions will contribute decisively to the further development of the human right to a healthy environment and integrate the already existing body of environmental human rights jurisprudence.
- + It could aid the Court in balancing environmental human rights interests with other rights/ interests.
- + The Court's power to order meaningful environmental remedies could be enhanced.
- + An Additional Protocol would address almost all of the rationales identified in Section II.
- + Only judicial intervention may break the current deadlock of perceived inaction of States concerning the triple planetary crisis by making governments accountable.
- + The Convention system, with its authoritative Court giving binding judgments, could remedy some of the perceived gaps in the international environmental law system such as i) the lack of a comprehensive normative framework in international environmental law, resulting in fragmentation and hindered implementation of sectoral environmental regimes; (ii) piecemeal and reactive approach, lacking coherence and synergy among regulatory frameworks, leading to coordination deficits and policy incoherence; (iii) problematic articulation between multilateral environmental agreements and related instruments due to unclear principles and their status; (iv) institutional fragmentation and coordination challenges in international environmental governance and (v) challenges in implementing international environmental law at national and international levels, including inadequate legislation, resources, and clarity on environmental principles.²⁰⁰

²⁰⁰ These gaps have been identified by the Un Secretary General, 'Gaps in International Environmental Law and Environment related Instruments: Towards a Global Pact for the Environment, UN Doc. A/73/419 (30 November 2018).

d) Arguments against an Additional Protocol

- To allow effective implementation of the right to a healthy environment, major adjustments to basic tenets of the Convention system would be needed. It has been argued that special provisions would be required *inter alia* on the jurisdiction requirement, the victim status requirement, the need to exhaust domestic remedies and the Court's remedial powers as well to evidentiary standards and processes. Deviating from established Convention principles with respect to the right to a healthy environment, however, would lead to a fragmentation of applicable standards that could be difficult to justify.
- The right to a healthy environment is different in nature from the other Convention rights that essentially protect subjective interests of individual human beings, insofar as it arguably also recognises and protects the collective interest in a clean, healthy and sustainable environment and/or the intrinsic value of the environment as such. The ECHR system provides a system of access to justice for the pursuit of subjective rights. It is not well suited for the enforcement of collective interests or ecocentric objectives. At the same time, it is said that the process of "greening human rights" has contributed to new interpretations of the content of human rights law with respect to environmental protection. Moreover, both HRC Resolution 48/13 and GA Resolution 76/300 specifically noted that "the right to a clean, healthy and sustainable environment is related to other rights and existing international law".²⁰¹ It is thus argued that the recognition of the right to a healthy environment in a protocol to the Convention would not create new obligations, but would rather permit the existing "normative *acquis*" to be consolidated instead of being fragmented across a range of instruments.²⁰² Introduction of the right to a healthy environment would therefore provide a stronger basis for the Court to consider environmental claims and to strengthen its existing environmental human rights jurisprudence.²⁰³
- Judges should not impose policy choices on States in the fight against the triple planetary crisis. Climate change issues in particular, as well as other environmental issues are multidimensional and involve issues of distributive justice. They therefore require a holistic approach: Who has to bear the economic costs of reduction measures? How to solve trade-offs between fighting climate change and other objectives such as environmental protection? How to provide for intergenerational equity? What is the level of environmental protection member States want to achieve? These issues require policy choices made and implemented in the democratic process.

²⁰¹ See UN HRC Resolution 48/13 point 2 and UN GA Resolution 76/300 point 2.

²⁰² Marcos Orellana, "Quality Control of the Right to a Healthy Environment," in *The Human Right to a Healthy Environment*, pp. 169, 176.

²⁰³ Extended Summary, Knox, p. 27

Possible solutions:➤ *Detailed definition of the nature, content and implications of the right by member States*

- Progressive Court judgments imposing policy choices on States based on the right to a healthy environment risk not being implemented. In the long run, this undermines the Court's authority.
- The Court has limited capacities which are already stretched thin. An Additional Protocol would further increase the number of pending applications.

Possible solutions:

- *additional financial resources for the ECtHR*
- *standing for NGO's could limit the burden on the Court's environmental case-load*

- The Court lacks the scientific expertise required to decide environmental cases. Climate change in particular involves highly technical questions and requires scientific knowledge. It is true that this would not be the only instance where human rights bodies would depend on outside expertise. For example, the Court has an established practice of adjudicating on cases related to issues of medical negligence where expert opinions play a key role.²⁰⁴

Possible solutions:➤ *stronger reliance on expert testimony*

- The content of the right to a healthy environment is uncertain; there is a need for robust standard-setting. Including it in the Convention gives the Court leeway to interpret it in its own way.

Possible solutions:

- *member States could themselves define the right to a healthy environment, as protected under the Convention system. This solution, however, would deviate from the approach adopted in all other Additional Protocols which are limited to setting out the rights covered in generic terms.*

- Additional financial resources for the Court may be required.

²⁰⁴ Lopes de Sousa Fernandes v. Portugal (GC), application no. 56080/13, judgment of 19 December 2017 para 217.

2. Additional Protocol to the European Social Charter

141. An Additional Protocol to the European Social Charter has also been proposed.

a) Possible content

The Additional Protocol could codify the right to a healthy environment.

b) Covered rationales

✓ Addressing gaps in international human rights law

An Additional Protocol would contain a legally binding codification of the right to a clean, healthy and sustainable environment and would also provide a monitoring mechanism. Although decisions of the European Committee on Social Rights are non-binding on member States, the ESC system with its collective complaints procedure would provide a way for non-governmental organisations and social partners to lodge complaints with respect to the right to a healthy environment without the need for a *lex specialis* provision as in the ECHR system. It would provide the European Committee on Social Rights with a standard that would remedy at least to a certain extent the limits of existing Charter rights in environmental matters. The extent to which alleged protection gaps would be closed depends on the content of the Additional Protocol. One of the main questions that would need to be answered with respect to admissibility issues is whether an Additional Protocol should extend the territorial reach of the Charter which is even more restricted than that of the ECHR. With respect to the substantive scope of protection, the extent to which the precautionary principle and other principles of international environmental law as well as the protection of environmental human rights defenders would play a role in the Committee's practice depends on how far the substantive standards of international environmental law are understood to be incorporated in the right to a healthy environment. This would be decided by the European Committee on Social Rights unless member States include provisions in the Additional Protocol in that respect.

✗ Addressing gaps with respect to the international responsibilities of private actors

As the European Social Charter imposes human rights obligations on States, an Additional Protocol would not contain obligations for private entities and therefore would not address the alleged gaps in the responsibility of private actors even though indirectly, States could be held responsible for the omissions of private actors within their jurisdiction, thereby being forced to address gaps with respect to the responsibilities of private actors.

✓ Shaping the content of the right to a healthy environment

Depending on the content: an Additional Protocol to the ESC would primarily allow the Committee to contribute to developing a common understanding of the content of the right to a healthy environment through its jurisprudence. Member States, on the other hand, could actively shape the understanding of the right by defining its content in more detail in the Additional Protocol.

✓ Encouraging the development of an environment-friendly jurisprudence

An Additional Protocol provides the strongest possible legitimacy for the development of the Committee's practice in environmental matters. Its general impact on the discourse on human rights and the environment is mitigated due to the non-binding nature of recommendations by the Committee.

✓ **Enhancing the protection for environmental human rights defenders**

Recognition would clarify that the right to a healthy environment is on the same level as other human rights thereby, recognising environmental human rights defenders and human rights defenders and, by extension, affording them the same level of protection. In addition, the Additional Protocol could include specific provisions on environmental human rights defenders.

✓ **Improving national protection of the right to a healthy environment**

To a certain extent, an Additional Protocol could work as a pull-factor in increasing the level of environmental protection in member States. A new instrument on human rights and the environment could encourage States that have not yet adopted the right to do so and encourage those States that have already adopted the right to take further active measures to implement it.

✓ **Establishing the Council of Europe's role**

An Additional Protocol would affirm the leading role of the Council of Europe in the area of human rights by being the first international organisation to meet the challenges posed by the triple planetary crisis with a binding human rights instrument.

c) Arguments for an Additional Protocol

- + The European Social Charter system is well suited to incorporate a right to a healthy environment. It encompasses two mechanisms – the reporting procedure and the collective complaints procedure – which are particularly suited for obligations concerning collective human interests such as protection of the environment. Complaints may be lodged without domestic remedies having been exhausted and without the complainant organisation necessarily being a victim of the alleged violation.
- + A binding codification of the right to a healthy environment combined with a monitoring mechanism will contribute decisively to the further development of the right to a healthy environment. Member States would have the possibility actively to influence the development.
- + Non-binding monitoring is more appropriate in an area where difficult policy choices need to be made.

d) Arguments against an Additional Protocol

- The impact of an Additional Protocol would be very limited as only a small number of States have ratified the collective complaints procedure.
- The protection offered by the Charter is furthermore limited by the restriction on its personal scope.

Possible solutions:

- *The ECSR has considered that the restriction on the personal scope should not be read in such a way as to deprive foreigners coming within the category of irregularly present migrants of the protection of the most basic rights enshrined in the Charter or to impair their fundamental rights such as the right to life or to*

*physical integrity or the right to human dignity.*²⁰⁵ Thus, it can be envisaged that the ECSR may extend the personal scope of the right to a healthy environment should it be added to the ESC via an Additional Protocol.

- Without binding judgments by an authoritative entity such as the ECtHR, current deadlock of perceived inaction of States concerning the triple planetary crisis will not cease.
- Individuals would not have the possibility to seize the European Social Committee.
- It is argued that the right to a healthy environment should not be identified only as an economic, social or cultural right, as it also has deep connections to civil and political rights. Consequently, the entire normative content envisaged for the right to a clean, healthy and sustainable environment could not be covered by the Charter alone.²⁰⁶ However, the ECSR interprets the rights under the Charter in light of the principle of indivisibility and interrelatedness of human rights.²⁰⁷ While the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature.²⁰⁸ Similarly, the Charter sets forth what are essentially social or economic rights, but many of them have implications of a civil and political nature.²⁰⁹ Protecting the right to a healthy environment under the ESC does not necessarily limit the scope or prejudice the nature of the right; it would rather represent a specific and limited form of protection of the right, or of certain aspects of the right.

3. Standalone Convention on Human Rights and the Environment

142. To address the linkages between human rights and the environment through robust standard-setting, the drawing-up of a self-standing Council of Europe Convention on Human Rights and the Environment has been proposed.

a) Possible content

143. A standalone Convention is a particularly flexible instrument; its content can be adapted according to the needs identified by member States. The Convention could codify the human right to a healthy environment. In addition, it could provide detailed substantive standards on the interaction between human rights and protection of the environment. The Convention could also contain provisions on the responsibilities of private actors. It has also been suggested that a self-standing Convention could set out substantive environmental standards that would become a point of reference for the Court's jurisprudence.

144. The flexibility also concerns possible monitoring mechanisms. Different options have been discussed: a state reporting system as foreseen for UN human rights treaties is conceivable. This

²⁰⁵ International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 30 and 31; Defence for Children International v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §19

²⁰⁶ Extended Summary, Knox, Expert contribution, p. 28.

²⁰⁷ International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, § 43; also Transgender Europe and ILGA-Europe v. the Czech Republic, Complaint No. 117/2015, decision on the merits of 15 May 2018, §83.

²⁰⁸ The Court has emphasised that there is no water-tight division separating the sphere of social and economic rights from the field covered by the Convention (*Airey v. Ireland*, Application no. 6289/73, Judgment of 9 October 1979, §26).

²⁰⁹ International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, § 42.

could (but doesn't have to) be combined with a system of individual and/or collective complaints to a committee. Admissibility requirements could be tailored to the specificities of the Convention's content and could deviate from ECHR provisions. A peer review process modeled on the UPR has also been proposed. If the Convention's focus is on the responsibility of private actors, the creation of a mechanism of alternative dispute resolution that involves business entities could also be an option. Another possibility would be to provide for the possibility to request Advisory Opinions from the ECtHR as foreseen in the Oviedo Convention.

b) Covered rationales

- ✓ **Addressing gaps in the international protection of human rights**

A Convention on Human Rights and the Environment could contain a legally binding codification of the right to a clean, healthy and sustainable environment. It could also provide for a monitoring mechanism (with or without access for individuals and non-governmental organisations), although in all likelihood without the possibility to issue binding decisions.
- ✓ **Addressing gaps with respect to the international responsibilities of private actors**

A Convention on Human Rights and the Environment could include provisions on the responsibility of private actors. A monitoring mechanism that involves private actors is conceivable.
- ✓ **Shaping the content of the right to a healthy environment**

A Convention on Human Rights and the Environment would allow member States to actively shape the understanding of the right by defining its content in more detail.
- ✓ **Encouraging the development of an environment-friendly jurisprudence**

A binding Convention on Human Rights and the Environment would strengthen the discourse on human rights and the environment. Depending on the substantive content, such as the introduction of IEL principles, the interaction between IEL and IHRL could be further crystallised. Its implications for the ECtHR's jurisprudence in environmental matters would be more limited and could be modulated depending on States' wishes.
- ✓ **Enhancing the protection for environmental human rights defenders**

A Convention that recognizes the right to a healthy environment would clarify that the right to a healthy environment is on the same level as other human rights, thereby recognising environmental human rights defenders and human rights defenders and, by extension, affording them the same level of protection. In addition, the Convention could include specific provisions on environmental human rights defenders.
- ✓ **Improving national protection of the right to a healthy environment**

A Convention on Human Rights and the Environment could work as a pull-factor in increasing the level of environmental protection in member States. A new instrument on human rights and the environment could encourage States that have not yet adopted the right to do so and encourage those States that have already adopted the right to take further active measures to implement it.
- ✓ **Establishing the Council of Europe's role**

A Convention on Human Rights and the Environment would affirm the leading role of the Council of Europe in the area of human rights by being the first international organisation to meet the challenges posed by the triple planetary crisis with a binding human rights instrument.

c) Arguments for a Convention

- + A binding codification of the right to a healthy environment possibly combined with a monitoring mechanism will contribute decisively to the further development of the right to a healthy environment. member States would have the possibility to influence actively this development.
- + The political recognition of the human right to a healthy environment has triggered a need for robust normative standards that merge human rights and environmental standards and provide orientation for States in the fight against the triple planetary crisis.
- + A Convention is not subject to the constraints of the ECHR system and provides great flexibility. It provides additional protection while leaving the Convention system intact.
- + A Convention could be opened for signature and ratification by non-Council of Europe-member States. Thereby its standards could have influence beyond Europe.

d) Arguments against a Convention

- Without binding judgments by an authoritative entity such as the ECtHR, current deadlock of perceived inaction of States concerning the triple planetary crisis will not cease.
- In case a monitoring mechanism is included, funding of the body and its activities by member States would be required.
- The new Convention would be in addition to an already existing landscape of multiple international instruments without the authoritative force of an established mechanism such as the Court. The risk is that the new Convention could be perceived by member States as another cumbersome routine. Formal ratification of treaties do not always generate changes in member States' domestic human rights practices.

4. Self-standing monitoring mechanism

145. Another option that has been raised in the course of the working group's discussions is the creation of a self-standing monitoring mechanism within the Council of Europe that deals with issues of human rights and the environment. The idea of the establishment of a new intergovernmental committee on environment and human rights ("Reykjavík Committee") has also been encouraged by the Heads of State and Government of the Council of Europe in the Reykjavík Declaration.

a) Possible content

146. The mechanism could be a collegial body similar to the European Commission against Racism and Intolerance (ECRI) composed of independent experts. But it could also take the form of a Commissioner similar to the Council of Europe's Commissioner for Human Rights.

147. Three pillars of activities are conceivable: country monitoring, thematic work and outreach. Country monitoring could consist in an ongoing dialogue between the body and the authorities of Council of Europe member States with a view to identifying solutions to environmental human

rights problems. Country visits could be organised on a regular basis. Thematic work could be done through policy recommendations addressed to member States. These recommendations could serve as guidance for policy makers and would contribute to standard-setting in the area of human rights and the environment. Finally, an important aspect of the body's work could be reaching out to society at large. The body could become a forum for dialogue with civil society in general and young people in particular. But it could also reach out to business entities.

b) Covered rationales

- ✘ Addressing gaps in the international protection of human rights

A self-standing monitoring mechanism would not improve the possibilities for individuals to make claims for environmental protection.
- ✘ Addressing gaps with respect to the international responsibilities of private actors

A self-standing monitoring mechanism would not directly enhance the responsibility of private actors. It could serve as a forum for dialogue with business entities, however.
- ✘ Shaping the content of the right to a healthy environment

A self-standing monitoring mechanism would not allow member States to shape the content of the right to a clean, healthy and sustainable environment. Through policy recommendations for example, however, the mechanism itself could contribute to the development of the right to a certain degree.
- ✘ Encouraging the development of an environment-friendly jurisprudence

A self-standing monitoring mechanism would strengthen the discourse on human rights and the environment, but its impact on the jurisprudence of the Court and the practice of the Committee on Social Rights would be limited
- ✔ Enhancing the protection for environmental human rights defenders

A self-standing monitoring mechanism could enhance the level of protection afforded to environmental human rights defenders, however, because of the non-binding nature of recommendations, the impact would remain limited.
- ✔ Improving national protection of the right to a healthy environment

Through an ongoing dialogue with national authorities, a self-standing monitoring mechanism could contribute to improving national protection in those States that already recognise the right to a clean, healthy and sustainable environment. Because of the non-binding nature of recommendations, the impact will remain limited, however.
- ✔ Establishing the Council of Europe's role

A self-standing monitoring mechanism dedicated to human rights and the environment would demonstrate the Council of Europe's commitment to strengthen the environmental dimension of human rights.

c) Arguments for a self-standing monitoring mechanism

- + A non-binding monitoring is more appropriate in an area where difficult policy choices need to be made.

- + The human right to a healthy environment is currently developing. A self-standing monitoring mechanism that acts through dialogue and recommendations is best adapted to the current state of international law.
- + A self-standing monitoring mechanism whose work is based on dialogue is well-suited to provide advice and support to member States on cross-cutting issues such as human rights and the environment.
- + A Commissioner for Human Rights and the Environment could intervene as third party in environmental cases before the ECtHR.

d) Arguments against a self-standing monitoring mechanism

- Monitoring based on dialogue will not be able to break the current deadlock of perceived inaction of States concerning the triple planetary crisis since it lacks enforcement power, limiting its ability to induce significant changes in State behavior and address environmental human rights issues effectively.
- The optional nature of monitoring diminishes the political and legal significance, potentially leading to selective engagement by States and a lack of accountability for violations.
- These mechanisms may suffer from a relative lack of practical impact, as they might not attract enough public attention or resources compared to legally binding instruments.
- The new mechanism would be in addition to an already existing landscape of multiple international monitoring mechanisms based on State reporting or country visits. The risk is that reporting could be perceived by member States as another cumbersome routine, an exercise of ticking boxes but not as an incentive for change.
- Funding of the new body and its activities by member States would be required.
- The creation of a new Commissioner for Human Rights and the Environment could encroach on the mandate of the Commissioner for Human Rights and lead to fragmentation.

5. Inclusion of environmental protection in the preamble of the ECHR

148. The idea has been raised within the working group to include the protection of the environment in the preamble of the ECHR.

a) Possible content

149. The ECHR's preamble could underline the interdependence of human rights and the environment, stress the importance of environmental protection and thereby provide textual support for the Court's environmental jurisprudence through the interpretative function of the preamble.

b) Covered rationales

- ✗ **Addressing gaps in the international protection of human rights**

The inclusion of environmental protection in the preamble of the ECHR would not address the gaps in the international protection of human rights identified in Section 2.
- ✗ **Addressing gaps with respect to the international responsibilities of private actors**

The inclusion of environmental protection in the preamble of the ECHR would not enhance the responsibility of private actors.
- ✗ **Shaping the content of the right to a healthy environment**

The inclusion of environmental protection in the preamble of the ECHR would not allow member States to shape the content of the right to a clean, healthy and sustainable environment.
- ✓ **Encouraging the development of an environment-friendly jurisprudence**

The inclusion of environmental protection in the preamble of the ECHR would provide opportunity for the Court to further strengthen its reliance on principles of international environmental law and would allow for the development of the Court's jurisprudence in environmental matters without implying the need for a fundamental change of the ECtHR's jurisprudence.
- ✗ **Enhancing the protection for environmental human rights defenders**

It would not provide any clear material enhancement of the level of protection afforded to environmental human rights defenders.
- ✓ **Improving national protection of the right to a healthy environment**

By strengthening the development of the Court's jurisprudence on environmental matters, the inclusion of environmental protection in the preamble of the ECHR could indirectly contribute to some extent to improving national protection of the right to a clean, healthy and sustainable environment in the long term.
- ✓ **Establishing the Council of Europe's role**

The inclusion of environmental protection in the preamble of the ECHR would reflect a certain awareness of the gravity of the issues involved but by itself may appear to be a minimalist and largely ineffectual response.

c) Arguments for inclusion of environmental protection in the ECHR's preamble

- + Including environmental protection in the ECtHR's preamble provides additional legitimacy to the ECtHR's environmental jurisprudence and boosts its further development within the confines of procedural and substantive ECHR standards.

d) Arguments against inclusion of environmental protection in the ECHR's preamble

- Member States have no control over the way the Court will use the addition to the preamble.

Possible solutions:

- *use an Explanatory Memorandum to clarify the aim of the addition*

- An Additional Protocol amending the existing preamble would be required that would have to be ratified by all member States to enter into force.

6. Non-binding instrument recognising the right to a clean, healthy and sustainable environment at the level of the Council of Europe

150. Another option that has been discussed in the working group is the adoption of a non-binding Council of Europe recommendation recognising the right to a clean, healthy and sustainable environment.

a) Possible content

151. The existing Recommendation CM/Rec(2022)20 on human rights and the environment does not recognise the human right to a clean, healthy and sustainable environment. A new Recommendation could follow the path of the UN resolutions and recognise the right. In addition, it could provide detailed substantive standards on the interaction between human rights and protection of the environment.

b) Covered rationales

✗ Addressing gaps in the international protection of human rights

A non-binding instrument recognising the right to a clean, healthy and sustainable environment would not address the gaps identified in Section II.

✗ Addressing gaps with respect to the international responsibilities of private actors

A non-binding instrument recognising the right to a clean, healthy and sustainable environment would not enhance the responsibility of private actors.

✓ Shaping the content of the right to a healthy environment

The recognition of the right to a clean, healthy and sustainable environment in a non-binding Council of Europe instrument would allow member States to actively shape the understanding of the right by defining its content in more detail. Due to the non-binding nature of the instrument, the legal impact would be limited, however, unless the Court were to rely on the non-binding instrument as a basis for developing its caselaw on existing rights in a way that would encompass aspects of the right to a healthy environment.

✓ Encouraging the development of an environment-friendly jurisprudence

The recognition of the right to a clean, healthy and sustainable environment in a non-binding Council of Europe instrument could influence the development of the Court's jurisprudence to a limited extent.

✓ Enhancing the protection for environmental human rights defenders

A non-binding instrument including specific provisions could enhance the level of protection afforded to environmental human rights defenders, however, because of the non-binding nature, the impact would remain limited.

✗ Improving national protection of the right to a healthy environment

The recognition of the right to a clean, healthy and sustainable environment in a non-binding Council of Europe instrument would not significantly increase the level of environmental protection in member States.

✘ **Establishing the Council of Europe's role in the area of human rights**

The recognition of the right to a clean, healthy and sustainable environment in a non-binding Council of Europe instrument would only align the Council of Europe's human rights framework with UN standards.

c) Arguments for a non-binding instrument

- + The recognition of the right to a clean, healthy and sustainable environment in a non-binding Council of Europe instrument would bring the Council of Europe's order in line with international standards.

d) Arguments against a non-binding instrument

- The recognition of the right to a clean, healthy and sustainable environment in a non-binding Council of Europe instrument would not be the decisive step that is needed to boost the fight against the triple planetary crises.
- The Council of Europe does not usually "recognise" human rights. Either a human right is contained in a binding instrument or it is not.
- The implications of recognising a human right are unclear. The Recommendation could be perceived as a purely symbolic instrument.

7. Combination of different instruments

152. Finally, different combinations of instruments have been discussed.

153. Additional Protocols could be added to both the ECHR and the ESC. A self-standing Convention could be combined with an addition of environmental protection to the ECHR's preamble just as a self-standing monitoring mechanism could be combined with an addition to the Court's preamble.

APPENDIX I

QUESTIONNAIRE TO MEMBER STATES

with a view of the preparation of a study on the need for and feasibility of a new instrument on human rights and the environment

QUESTION 1

Is some explicit form of human right to a healthy environment protected under the constitution, legislation or jurisprudence, and if so in what terms?

QUESTION 2

Is the right justiciable, and if so on what conditions?

QUESTION 3

What, if anything, have the domestic courts said about this right in their caselaw?

APPENDIX II

Compilation of work of the UN on Environment, Climate Change and Human Rights**1. Human Rights Council mandated reports on climate change**

- Since 2008, the Human Rights Council has adopted a series of resolutions on human rights and climate change. These [resolutions](#) have requested for a number of thematic panel discussions on climate change to be held at the Council and have also requested OHCHR to prepare studies to the Council. Themes addressed so far have included the rights of the child, migration, gender-responsive climate action, right to health, rights of persons with disabilities, rights of older persons, people in vulnerable situations, and the right to food. The reports shared below clearly describe the human rights impacts of climate change in specific contexts and articulate human rights-based responses to address them and empower the people most affected. The rights of people in vulnerable situations in the context of climate change (2022), [A/HRC/50/57](#)
- The rights of older persons in the context of climate change (2021), [A/HRC/47/46](#)
- The promotion and protection of the rights of persons with disabilities in the context of climate change (2020), [A/HRC/44/30](#)
- Realizing the rights of the child through a healthy environment (2020), [A/HRC/43/30](#)
- Gender-responsive climate action for the full and effective enjoyment of the rights of women (2019), [A/HRC/41/26](#)
- Addressing human rights protection gaps in the context of migration and displacement of persons across international borders resulting from the adverse effects of climate change and supporting the adaptation and mitigation plans of developing countries to bridge the protection gaps (2018), [A/HRC/38/21](#)
- The relationship between climate change and the full and effective enjoyment of the rights of the child (2017), [A/HRC/35/13](#)
- The relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2016), [A/HRC/32/23](#)
- Report on the relationship between climate change and human rights (2009) [A/HRC/10/61](#)

2. Work by the special procedures mechanisms of the Human Rights Council relevant to rights-based climate action

The Special procedures mechanisms of the Human Rights Council play a critical role in researching the human rights impacts of climate change and advocating rights-based climate action. In 2015, a joint report by Special Rapporteurs on [the effects of Climate Change on the Full Enjoyment of Human Rights](#) (2015) was requested by the Climate Vulnerable Forum. The report's human rights-based analysis of the likely impacts of climate change at different levels of warming provided a powerful impetus for the push for a 1.5° Celsius target in the Paris Agreement. In September 2019, 11 Special Rapporteurs and members of Working Groups of the Human Rights Council working on different facets of human rights stated: "A safe climate is a vital element of the right to a healthy environment and is absolutely essential to human life and well-being. In today's global climate emergency, meeting the obligations to respect, protect and fulfil human rights could help to spur the transformative changes that are so urgently required." In June 2021, 50+ mandate holders issued a [joint statement](#) calling for recognition of the right to a healthy environment as key to address the environmental crisis and protect human rights.

A number of Special Rapporteur communications have addressed climate change and they can be found by searching the [human rights index](#). This non-exhaustive [list of Special Procedure reports on climate change](#) includes reports on and related to rights-based climate action. Given the serious impacts of climate change on human rights, many Special Procedures mechanisms have prepared thematic reports specifically on climate change. These include:

[Special Rapporteur on climate change:](#)

- Promotion and protection of human rights in the context of climate change (2022), [A/77/226](#)
- Report on initial planning and vision for the mandate of the Special Rapporteur for the promotion and protection of human rights in the context of climate change (2022), [A/HRC/50/39](#)

[Special Rapporteur on human rights and the environment:](#)

- Women, girls and the right to a clean, healthy and sustainable environment - Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (2023), [A/HRC/52/33](#)
- The right to a clean, healthy and sustainable environment: non-toxic environment (2022), [A/HRC/49/53](#)
- Human rights and the global water crisis: water pollution, water scarcity and water-related disasters (2021), [A/HRC/46/28](#)
- Right to a healthy environment: good practices (2019), [A/HRC/43/53](#)
- Safe climate (2019), [A/74/161](#)
- Clean air and the right to a healthy and sustainable environment (2019), [A/HRC/40/55](#)
- Climate change (2016), [A/HRC/31/52](#)

Special Rapporteur on the right to health:

- [Compilation of climate change-related statements and observations](#) by the Special Rapporteur

Special Rapporteur on the right to adequate housing:

- Towards a just transition: the climate crisis and the right to adequate housing (2022), [A/HRC/52/28](#)
- The right to housing of Indigenous Peoples (2019), [A/74/183](#)
- Climate Change and the Right to Housing (2009), [A/64/255](#)

Special Rapporteur on the right to food:

- Impact of climate change on the right to food (2015), [A/70/287](#)

Special Rapporteur on the human rights to safe drinking water and sanitation:

- [Special Thematic Report Part 3](#): A rights-based approach to adaptation, mitigation, finance, and cooperation (2022)
- [Special Thematic Report Part 2](#): The impacts of climate change on the human rights to water and sanitation of groups and population in situations of vulnerability (2022)
- [Special Thematic Report Part 1](#): Outlining the impacts of climate change on water and sanitation around the world (2022)
- Climate Change and the Human Rights to Water and Sanitation: [Position paper](#) (2010)

Special Rapporteur on the right to development:

- Climate action at the national level (2021), [A/HRC/48/56](#)
- Climate action and the right to development- international level (2021), [A/76/154](#)

Working Group of Experts on People of African Descent:

- Environmental justice, the climate crisis, and people of African descent (2021), [A/HRC/48/78](#)

Special Rapporteur on contemporary forms of racism:

- Ecological crisis, climate justice and racial justice (2022), [A/77/549](#)

Special Rapporteur on the rights of indigenous peoples:

- Impacts of climate change and climate finance on indigenous peoples' rights (2017), [A/HRC/36/46](#)

Special Rapporteur in the field of cultural rights:

- Climate change, culture, and cultural rights (2020), [A/75/298](#)

Special Rapporteur on human rights defenders:

- Environmental human rights defenders (2016), [A/71/281](#)

Special Rapporteur on freedom of peaceful assembly and of association:

- Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice (2021), [A/76/222](#)

Special Rapporteur on the human rights of internally displaced persons:

- Internal displacement in the context of slow-onset adverse effects of climate change (2020), [A/75/2017](#)
- Climate change and internal displacement (2011), [A/66/285](#)
- Climate change and displacement (2009), [A/64/214](#)

Special Rapporteur on the human rights of migrants:

- The impact of climate change on the human rights of migrants (2022), [A/77/189](#)
- Climate change and migration (2012), [A/67/299](#)

Special Rapporteur on extreme poverty and human rights:

- Climate change and poverty (2019), [A/HRC/41/39](#)

Independent Expert on human rights and international solidarity:

- International solidarity and climate change (2020), [A/HRC/44/44](#)

3. Universal Periodic Review – Recommendations on Climate Change

The Universal Periodic Review (UPR) is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare, during a peer-led review process of the human rights situation in their country, what actions they have taken to fulfil their human rights obligations. As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed. The ultimate aim of this mechanism is to improve the human rights situation in all countries. Currently, no other universal mechanism of this kind exists.

The UPR, which ultimately results in concrete recommendations to the State under review, is increasingly addressing the links between climate change and human rights. Between 2008 and 2018, States made 114 recommendations explicitly addressing climate change. Nauru, Kiribati, the United States of America, Samoa, and Tuvalu received the largest number of climate change-related recommendations during the first and second UPR cycles. The Maldives, the Philippines, Haiti, Sierra Leone, and Bangladesh were the States that made the most climate-related recommendations during these two cycles.

By 2023, following a significant uptick in climate change related recommendations, more than 400 such recommendations have been made. Examples include:

Vanuatu's recommendation to the Netherlands (2022): [A/HRC/52/16](#) (UPR 2022) "Continue to implement prudent policies to protect vulnerable groups from the negative impacts of climate change".

Panama's recommendation to Ecuador (2022): [A/HRC/52/5](#) (UPR 2022) "Adopt a coordinated and differentiated approach to tackling climate change in order to reduce the vulnerability of people, ecosystems, and productive systems, increase the ambition of the targets established in the national climate change policy and prioritize investments with a view to decarbonizing the national economy by 2050".

Fiji's recommendation to Iceland (2022): [A/HRC/50/7](#) (UPR 2022) "Fiji commended the country's focus on combating climate change through its goal under the revised climate action plan of becoming carbon-neutral by 2040".

Sudan's recommendation to Palau (2021): [A/HRC/48/12](#) (UPR 2021) "89.7 Continue efforts to mitigate the negative impacts of climate change on livelihoods and human rights".

4. National human rights institutions and climate change

The Global Alliance of National Human Rights Institutions (GANHRI) Annual Conference in December 2020 issued an [outcome statement on climate change and human rights](#), highlighting that "climate change and its impacts are one of the greatest challenges of the day, directly and indirectly impacting on the full enjoyment of human rights, including social, economic and cultural rights as well as civil and political rights, the right to development and the right to a healthy environment". The statement also notes that a "human rights-based approach leads to more sustainable and effective climate action and climate policies" and calls on States to "ratify and implement international and regional human rights treaties, taking into account the recommendations and guidance from the UN Human Rights Council, UN Special Procedures and UN Treaty Bodies."

Under the [Secretary-General's Call to Action for Human Rights](#), OHCHR serves as one of the co-leading agencies on the action area of [rights of future generations](#), especially climate justice. OHCHR together with UNEP, UNDP and GANHRI is working to support National Human Rights Institutions (NHRIs) with respect to climate change. As the GANHRI Annual Conference outcome statement on climate change emphasized, NHRIs can play a key role in supporting more effective rights-based climate action, and monitoring and reporting on the human rights impacts of climate change including in support of the global stocktake and other UNFCCC processes. The National Human Rights Committee of Qatar, the Office of the UN High Commissioner for Human Rights, the UN Development Program, the League of Arab States, and GANHRI recently co-organised a conference on climate change and human rights.

APPENDIX III



General Assembly

Seventy-sixth session
 Agenda item 74 (b)
 Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Resolution adopted by the General Assembly on 28 July 2022

[without reference to a Main Committee ([A/76/L.75](#) and [A/76/L.75/Add.1](#))]

76/300 The human right to a clean, healthy and sustainable environment

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations,

Reaffirming the Universal Declaration of Human Rights¹ and the Vienna Declaration and Programme of Action,² recalling the Declaration on the Right to Development,³ the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration),⁴ the Rio Declaration on Environment and Development,⁵ and relevant international human rights treaties, and noting other relevant regional human rights instruments,

Reaffirming also that all human rights are universal, indivisible, interdependent and interrelated,

Reaffirming further its resolution [70/1](#) of 25 September 2015, entitled “Transforming our world: the 2030 Agenda for Sustainable Development”, in which it adopted a comprehensive, far-reaching and people-centred set of universal and transformative Sustainable Development Goals and targets, its commitment to working tirelessly for the full implementation of the Agenda by 2030 ensuring that no one is left behind, its recognition that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development, and its commitment to achieving sustainable development in its three dimensions – economic, social and environmental – in a balanced and integrated manner,

¹ Resolution [217 A \(III\)](#).

² [A/CONF.157/24 \(Part I\)](#), chap. III

³ Resolution [41/128](#), annex.

⁴ *Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972* ([A/CONF.48/14/Rev.1](#)), part one, chap. I.

⁵ *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.

Recalling States' obligations and commitments under multilateral environmental instruments and agreements, including on climate change, and the outcome of the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, in June 2012, and its outcome document entitled "The future we want",⁶ which reaffirmed the principles of the Rio Declaration on Environment and Development,

Recalling also Human Rights Council resolution [48/13](#) of 8 October 2021, entitled "The human right to a clean, healthy and sustainable environment",⁷

Recalling further all Human Rights Council resolutions on human rights and the environment, including resolutions [44/7](#) of 16 July 2020,⁸ [45/17](#) of 6 October 2020,⁹ [45/30](#) of 7 October 2020¹⁰ and [46/7](#) of 23 March 2021,¹¹ and relevant resolutions of the General Assembly,

Recognizing that sustainable development, in its three dimensions (social, economic and environmental), and the protection of the environment, including ecosystems, contribute to and promote human well-being and the full enjoyment of all human rights, for present and future generations,

Recognizing also that, conversely, the impact of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in services provided by ecosystems interfere with the enjoyment of a clean, healthy and sustainable environment and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights,

Reaffirming that international cooperation has an essential role in assisting developing countries, including highly indebted poor countries, least developed countries, landlocked developing countries, small island developing States, as well as the specific challenges faced by middle-income countries, in strengthening their human, institutional and technological capacity,

Recognizing that, while the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by women and girls and those segments of the population that are already in vulnerable situations, including indigenous peoples, children, older persons and persons with disabilities,

Recognizing also the importance of gender equality, gender-responsive action to address climate change and environmental degradation, the empowerment, leadership, decision-making and full, equal and meaningful participation of women and girls, and the role that women play as managers, leaders and defenders of natural resources and agents of change in safeguarding the environment,

Recognizing further that environmental degradation, climate change, biodiversity loss, desertification and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights,

⁶ Resolution [66/288](#), annex.

⁷ *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 53A* ([A/76/53/Add.1](#)), chap. II.

⁸ *Ibid.*, *Seventy-fifth Session, Supplement No. 53* ([A/75/53](#)), chap. V, sect. A.

⁹ *Ibid.*, *Supplement No. 53A* ([A/75/53/Add.1](#)), chap. III.

¹⁰ *Ibid.*

¹¹ *Ibid.*, *Seventy-sixth Session, Supplement No. 53* ([A/76/53](#)), chap. V, sect. A.

Recognizing that the exercise of human rights, including the rights to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and to an effective remedy, is vital to the protection of a clean, healthy and sustainable environment,

Reaffirming that States have the obligation to respect, protect and promote human rights, including in all actions undertaken to address environmental challenges, and to take measures to protect the human rights of all, as recognized in different international instruments, and that additional measures should be taken for those who are particularly vulnerable to environmental degradation, noting the framework principles on human rights and the environment,¹²

Recalling the Guiding Principles on Business and Human Rights,¹³ which underscore the responsibility of all business enterprises to respect human rights,

Affirming the importance of a clean, healthy and sustainable environment for the enjoyment of all human rights,

Taking note of all the reports of the Special Rapporteur (formerly the Independent Expert) on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment,¹⁴

Noting “The highest aspiration: a call to action for human rights”, which the Secretary-General presented to the Human Rights Council on 24 February 2020,

Noting also that a vast majority of States have recognized some form of the right to a clean, healthy and sustainable environment through international agreements, their national constitutions, legislation, laws or policies,

1. *Recognizes* the right to a clean, healthy and sustainable environment as a human right;
2. *Notes* that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;
3. *Affirms* that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law;
4. *Calls upon* States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.

97th plenary meeting
28 July 2022

¹² [A/HRC/37/59](#), annex

¹³ [A/HRC/17/31](#), annex

¹⁴ [A/73/188](#), [A/74/161](#), [A/75/161](#), [A/76/179](#), [A/HRC/22/43](#), [A/HRC/25/53](#), [A/HRC/28/61](#), [A/HRC/31/52](#), [A/HRC/31/53](#), [A/HRC/34/49](#), [A/HRC/37/58](#), [A/HRC/37/59](#), [A/HRC/40/55](#), [A/HRC/43/53](#), [A/HRC/43/54](#), [A/HRC/46/28](#) and [A/HRC/49/53](#).