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(CDDH)

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

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

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## 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".<sup>1</sup>
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.
  - 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 4 non-member States and the EU.<sup>2</sup>
  - 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 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.<sup>3</sup>
  - 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

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

<sup>2</sup> 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.

<sup>3</sup> 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.

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.<sup>4</sup>
- 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.
- 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.

4. As regards human rights and the environment, the European Convention on Human Rights (ECHR or the Convention) and the European Social Charter (ESC or the Charter), while not directly including environmental protection, have been applied with a view to guarantee the protection, the respect and the fulfilment of various rights in the context of environmental damage, as demonstrated respectively by the case law of the European Court of Human Rights (ECtHR or the Court) and the conclusions and decisions of the European Committee of Social Rights (ECSR).<sup>5</sup> These 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, applicants rely 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 and procedural rights such as freedom of expression (including access to information), freedom of assembly, right to a fair trial (including access to a court) and the right to an effective remedy. In the case of the Charter, relevant provisions include the rights to just conditions of work, to safe and healthy working conditions, to protection of health, and to housing.

5. The way in which the Convention and the Charter have been applied in the environmental context is explored in detail in the [CDDH Manual on Human Rights and the Environment](#) (3rd edition, adopted in 2021).

6. The Council of Europe Convention on Access to Official Documents (Tromsø Convention), which guarantees a general right to access to official documents held by public authorities, including on environmental matters, is another noteworthy binding instrument. The Tromsø

<sup>4</sup> 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.

<sup>5</sup> For the procedural requirements and application of substantive standards of the Convention and the Charter see paragraphs 49-69 of the present report.

Convention is the only international legal instrument which guarantees a general right to access to 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 15 Parties: Albania, Armenia, Bosnia and Herzegovina, Estonia, Finland, Hungary, Iceland, Lithuania, Montenegro, Norway, the Republic of Moldova, Slovenia, Spain, Sweden and Ukraine.

7. The Committee of Ministers has also recently adopted [Recommendation CM/Rec\(2022\)20](#) to member States on human rights and the protection of the environment. Environment-related standard-setting work has 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.

8. The Council of Europe's recent 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-ENV 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.

9. In 2022, the Congress of Local and Regional Authorities adopted a report<sup>6</sup> encouraging local authorities to abide by their existing human rights and environmental obligations by developing specific local strategies. The report recognising that "adopting a human rights-based approach to the protection of the environment and sustainable development and delivering a resilient and sustainable ecosystem is [...] a shared responsibility of local, regional and national authorities" also calls on national governments to strengthen awareness among local authorities of their role in environmental protection. It also proposes to take steps towards the preparation of a draft additional protocol to the European Charter on Local Self-Government in order to guarantee the commitment of member States dealing specifically with environmental rights at local level.

10. The 9th edition of the Council of Europe's World Forum for Democracy in November 2020 explored the question, "Can Democracy Save the Environment?" by discussing differing answers to the question of how to stop and reverse the damage done to the environment. Recommendations were made to introduce the right to a clean, healthy and safe environment among the list of human rights protected by the Council of Europe, along with the inclusion of crimes against such right in the criminal codes of the member States.<sup>7</sup>

<sup>6</sup> 1 Report CG(2022)43-15final on "A fundamental right to the environment: a matter for local and regional authorities" adopted by the Congress of Local and Regional Authorities during its 43 Session on 26 October 2022.

<sup>7</sup> See <https://www.coe.int/en/web/world-forum-democracy/expert-round-table>.

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 with 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. In 1970, with subsequent efforts in 1990, 1999, 2003 and 2009, the Parliamentary Assembly of the Council of Europe attempted to address the relationship between human rights and the environment by proposing an additional protocol to the European Convention on Human Rights. 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 simultaneously draw up (1) additional protocols to the Convention and (2) to the Charter, (3) to prepare a feasibility study for a convention on environmental threats and technological hazards threatening human health, dignity and life and<sup>8</sup>(4) 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.<sup>9</sup> 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".<sup>10</sup>The Parliamentary Assembly of the Council of Europe has also established a Network of Contact Parliamentarians for a healthy environment,<sup>11</sup> which aims to anchor the right to a clean, healthy and sustainable environment in law, policy, practice and public awareness in Europe and beyond. The Assembly advocates the right to a "safe, clean, healthy and sustainable environment". Adherence to the four adjectives was renewed on the occasion of the adoption of Resolution 2493 (2023) and Recommendation 2251 (2023) on "Policy strategies for preventing, preparing for and responding to natural disasters".

13. At the Fourth Summit ("Reykjavik Summit") held between 16–17 May 2023, the Heads of State and Government of the Council of Europe, in the [Reykjavik Declaration](#), underlined "the urgency of additional efforts to protect the environment, as well as to counter the impact of the triple planetary crisis of pollution, climate change and loss of biodiversity"<sup>12</sup> and to "strengthen [their] work at the Council of Europe on the human rights aspects of the environment based on

<sup>8</sup> Resolution 2396 (2021) para 13 „By preventing and prosecuting violations of the right to a safe, clean, healthy and sustainable environment, and protecting the victims, the contracting States would adopt and implement state-wide integrated policies that are effective and offer a comprehensive response to environmental threats and technological hazards, involving parliaments in holding governments to account for the effective implementation of environment-friendly pro-human rights policies.”

<sup>9</sup> See doc. CM/Del/Dec(2021)1416/3.1, 3 November 2021.

<sup>10</sup> See the appendix of PACE Recommendation 2211 (2021) on "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe".

<sup>11</sup> 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.

<sup>12</sup> Reykjavik Declaration, p. 6.

the political recognition of the right to a clean, healthy and sustainable environment as a human right, in line with United Nations General Assembly Resolution 76/300 "The human right to a clean, healthy and sustainable environment".<sup>13</sup> To this end, they initiated the "Reykjavik Process", encouraging the establishment of a new intergovernmental committee on environment and human rights ("Reykjavik Committee") and calling for the conclusion of the CDDH's feasibility study as soon as possible.

14. Against this institutional background, and the wider background of European and international law generally, the present report will address the need for and feasibility of a further binding and/or non-binding Council of Europe instrument or instruments on human rights and the environment. The Report aims to provide all relevant factual and legal information so as to allow policy makers to take an informed decision on the need for and feasibility of a further instrument or instruments.

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.<sup>14</sup>

17. 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.

18. This report will analyse the possible need and feasibility of one or more additional instruments on the protection of human rights and the environment as follows. Firstly, it will describe the current environmental challenges that raise the question on the possible need for one or more new instruments (see paragraphs 18-23). Second, it will explore the relationship between human rights and these environmental challenges (see paragraphs 24-74). Third, the report will examine the way in which existing instruments address the human rights aspects of these environmental challenges (see paragraphs 75-99). Fourth, it will identify various rationales for a new instrument or instruments on human rights and the environment that have been brought forward in discussions on the need for a new instrument (see paragraphs 100-112). Finally, the report, based on the mandate of the CDDH, will analyse the feasibility of various instruments proposed (see paragraphs 113-192).

## **II. Whether there is a need for a further instrument or instruments**

*Current environmental challenges and their impact on human rights*

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<sup>13</sup> Reykjavik Declaration, Appendix V, point (i).

<sup>14</sup> See Appendix I.



19. Humanity is facing an unprecedented challenge in the form of environmental degradation and the triple planetary crisis<sup>15</sup> of climate change,<sup>16</sup> biodiversity loss,<sup>17</sup> and pollution.<sup>18</sup> Individuals and communities around the world are affected and where there are human rights consequences<sup>19</sup> they are most severe for those who are already in vulnerable and in exposed situations.<sup>20</sup> Regard should be had to the effects on the younger and future generations.<sup>21</sup>

20. The climate crisis has been identified as the greatest threat to human rights by the former United Nations High Commissioner for Human Rights.<sup>22</sup> 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, adaptation and mitigation actions that prioritise equity, social justice, climate justice, rights-based approaches, and inclusivity, lead to more sustainable outcomes, reduce trade-offs, support transformative change and advance climate resilient development.<sup>23</sup> The decline in biodiversity,<sup>24</sup> coupled with air, soil, and water pollution's detrimental impact on human well-being,<sup>25</sup> further underscores the potential need for environmental protection to ensure the full enjoyment of human rights.

<sup>15</sup> There is no universally agreed definition on "triple planetary crisis"; however, see <https://www.unep.org/news-and-stories/speech/triple-planetary-crisis-forging-new-relationship-between-people-and-earth>

<sup>16</sup> IPCC, 2022: Summary for Policymakers [H.-O. Pörtner, D.C. Roberts, E.S. Poloczanska, K. Mintenbeck, M. Tignor, A. Alegria, M. Craig, S. Langsdorf, S. Lösche, 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. Alegria, M. Craig, S. Langsdorf, S. Lösche, 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)

<sup>17</sup> 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.

<sup>18</sup> 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).

<sup>19</sup> It is important to note that human rights consequences do not necessarily entail violations of human rights.

<sup>20</sup> See HRC, Report of the Secretary-General, The impacts of climate change on the human rights of people in vulnerable situations, A/HRC/50/57 (2022).

<sup>21</sup> See also the Maastricht Principles on the Human Rights of Future Generations, a non-binding document resulting from six years of research and consultations with civil society organizations, experts, and scholars in various fields.

<sup>22</sup> 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>

<sup>23</sup> 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], Section 4.4, p. 101.

<sup>24</sup> 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

<sup>25</sup> 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 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,

21. The possible consequences of these environmental issues for human rights are common and urgent concerns that need to be further addressed, including as a matter of inter-generational equity and solidarity.<sup>26</sup>

22. The acknowledgment of the relationship between human rights and the environment has grown significantly in recent years, including by the Parliamentary Assembly<sup>27</sup> and the Committee of Ministers<sup>28</sup> of the Council of Europe. There is also an increasing recognition – at the national<sup>29</sup>, regional<sup>30</sup> and international<sup>31</sup> levels – of a right to a clean, healthy and sustainable environment. However, this right is not yet protected as such in a treaty either at global or European level.<sup>32</sup> This means that there is not yet a universal understanding amongst Council of Europe member States of the “nature, content and implications”<sup>33</sup> of the right.

23. The urgency of addressing the impact of environmental degradation and the triple planetary crisis on human rights is also voiced by civil society. The Conference of International Non-Governmental Organisations (INGOs) of the Council of Europe, on the issue 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.<sup>34</sup>

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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>.

<sup>26</sup> CM/Rec(2022)20; on solidarity see *Vavříčka and Others v. The Czech Republic* [GC], app. nos. 47621/13 3867/14 and others, Judgment of 8 April 2021, § 279 and § 306.

<sup>27</sup> PACE Recommendation 2211(2021), *Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe* (September 2021).

<sup>28</sup> 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).

<sup>29</sup> According to the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, some form of the right to a healthy environment is recognized in domestic law by more than 80 percent (156 out of 193) of States Members of the United Nations. See, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, HRC, 30 December 2019, A/HRC/43/53. According to information received by the CDDH-ENV from the aforementioned Special Rapporteur on 10 November 2023, the following States have legally recognised the right to a healthy environment: Antigua and Barbuda, Belize, Canada, Grenada, and Saint Lucia. This raises the number to 83 percent (161 out of 193) of States Members of the United Nations.

<sup>30</sup> 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.

<sup>31</sup> 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.

<sup>32</sup> Divergent views exist on whether the Aarhus Convention protects a right to a healthy environment. It is important to note, however, that UN treaty bodies have already engaged with allegations of human rights violations in the context of environmental degradation as laid out in paragraphs 39–40 of this report.

<sup>33</sup> CM/Rec(2022)20, point 1.

<sup>34</sup> 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.

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.<sup>35</sup> More recently, in March 2023, as an outcome of the Civil Society "Shadow" Summit, the Conference of INGOs together with the CURE Campaign<sup>36</sup> 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 legally binding, autonomous right to a clean, healthy and sustainable environment through an additional protocol to the European Convention on Human Rights."<sup>37</sup>

24. There is an extensive international regulatory framework concerning the protection of the environment that is already in place which produces legal effects both under national and international law. The question nevertheless remains, whether in light of the critical human rights challenges posed by environmental degradation, there is a need for a new instrument or instruments on human rights and the environment within the system of the Council of Europe.

#### **A. Human rights and environmental protection at the international level**

25. International Human Rights Law (IHRL) and International Environmental Law (IEL) have developed as separate regimes. IEL primarily aims to address the negative impacts on the environment, with the objective of protecting and conserving the environment whilst IHRL is principally concerned with the protection of human rights. Although they are two different branches of international law, it is recognised that they complement one another on some issues. To that end, GA Res 76/300 affirmed "the importance of a clean, healthy and sustainable environment for the enjoyment of all human rights," and recognised "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".<sup>38</sup>

26. As per the current state of law, while certain IEL instruments grant limited directly actionable rights to individuals or groups that can be invoked before national courts or international monitoring mechanisms,<sup>39</sup> IEL does not grant any general, directly actionable right to individuals or groups to an environment of a certain standard.<sup>40</sup> IHRL usually grants directly actionable rights to individuals and groups, including oversight at the international level by courts and treaty bodies.<sup>41</sup> However, where IEL sets rules to which States must adhere in relation to the natural environment,<sup>42</sup> IHRL does not grant direct protection to the environment.<sup>43</sup>

<sup>35</sup> 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.

<sup>36</sup> Campaign to Uphold Rights in Europe is an initiative of civil society organisations from across the European continent that was launched on 26 January 2022 in Strasbourg.

<sup>37</sup> See <https://cure-campaign.org/wp-content/uploads/CSSDeclarationFinal.pdf> (at point 6).

<sup>38</sup> GA Resolution 76/300.

<sup>39</sup> Notable exception exists under the Aarhus Convention and the Escazú Agreement.

<sup>40</sup> Report of the Secretary-General, Gaps in international environmental law and environment-related instruments: towards a global pact for the environment, 30 November 2018, UN doc. A/73/419, §92.

<sup>41</sup> See, for example, the Right of individual application to the European Court of Human Rights (art. 34 ECHR).

<sup>42</sup> See, for example, Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972 A/CONF.48/14/Rev.1, Principle 2; The World Charter for Nature, 28 October 1982, A/RES/37/3, general principles.

<sup>43</sup> It only does so indirectly, through the application of certain human rights in an environmental context. See ECtHR, *López Ostra v. Spain*, app no. 16798/90, Judgment, 9 December 1994, §51.

27. A pertinent issue with regard to human rights and the environment is the issue of business and human rights, and thus the responsibilities of businesses. To effectively prevent further environmental degradation and to respond to the triple planetary crisis, the involvement of businesses is key.

28. Exploration of the relationship between human rights and the environment has not only taken place at the Council of Europe level, but also at the international level, notably at multilateral institutions. The table under appendix II represents an overview of existing Council of Europe and, non-exhaustively, some of the other international instruments that address human rights and/or the environment. The following section reviews the evolution of developments in the recognition and articulation of the relationship between human rights and environmental protection at the international level.

**i. Human rights and environmental protection in relevant UN treaties**

29. The relationship between human rights and the environment has been addressed, directly or indirectly, in a number of UN treaties.

30. The 1992 UN Convention on Biological Diversity<sup>44</sup> was adopted at the UN Conference on Environment and Development, also known as the “Earth Summit” in Rio de Janeiro.<sup>45</sup> It entered into force on 29 December 1993 and has been ratified by 196 States. 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.<sup>46</sup> It requires States to adhere to procedural obligations by conducting assessments, providing access to information and facilitating public participation in relation to environmental impact assessments.

31. The 1992 United Nations Framework Convention on Climate Change (UNFCCC) was adopted at the “Earth Summit” and establishes a legal framework for climate action. The Paris Agreement, adopted by consensus on 12 December 2015 at COP 21 of the UNFCCC<sup>47</sup>, was the first global environmental treaty that makes direct reference to States’ human rights obligations, stating in its preamble that “[p]arties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights”.<sup>48</sup>

32. The 1994 United Nations Convention to Combat Desertification (UNCCD)<sup>49</sup> establishes a legal framework to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification<sup>50</sup>. It entered into force on 26 December 1996 and has 197 parties. The UNCCD affirms that “human beings in affected or threatened areas are at the centre of concerns to combat desertification and mitigate the effects of drought”.<sup>51</sup> It encourages states to ensure the participation of the populations and local communities in the decision-making on the design and implementation of programmes to combat desertification

<sup>44</sup> Convention on Biological Diversity, June 5, 1992, 31 I.L.M. 818 (entered into force Dec. 29, 1993).

<sup>45</sup> The Agreements include the Rio Declaration, Convention on Climate Change, Convention on Biological Diversity and Statement of Principles on Forests.

<sup>46</sup> Convention on Biological Diversity, Preamble.

<sup>47</sup> Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

<sup>48</sup> Ibid. Preamble.

<sup>49</sup> Convention to Combat Desertification, October 14, 1994, 33 ILM 1328 (entered into force Dec. 26, 1996).

<sup>50</sup> Convention to Combat Desertification, Article 2.

<sup>51</sup> Ibid, preamble.

and/or mitigate the effects of drought<sup>52</sup> and requires states' national action programmes to "provide for effective participation at the local, national and regional levels of non-governmental organizations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organizations, in policy planning, decision-making, and implementation and review of national action programmes".<sup>53</sup>

33. 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.

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

34. Due to the constraints of the present report, it is not possible to present a comprehensive overview of all relevant UN instruments and mechanisms. For the purpose of the present report, the following in particular can be noted.

35. A milestone is Resolution 48/13 on "[t]he human right to a clean, healthy and sustainable environment", adopted by the Human Rights Council (HRC) on 8 October 2021.<sup>54</sup> The resolution politically recognised 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. 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 which voted were in favour. 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. 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.

36. In its preamble, Resolution 48/13 stressed the negative implications, both direct and indirect, 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."

37. Based on the text adopted by the HRC, the UN General Assembly, on 28 July 2022, with a record of 161 States (including all Council of Europe member States) voting 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 (UNGA Resolution).<sup>55</sup> Among the co-sponsors of

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<sup>52</sup> Ibid, Article 3(a).

<sup>53</sup> Ibid, Article 10(2)(f)

<sup>54</sup> 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>

<sup>55</sup> UN General Assembly resolution, The human right to a clean, healthy and sustainable environment, 26 July 2022, A/RES/76/300.

the UNGA Resolution were 38 Council of Europe member States.<sup>56</sup> The UNGA Resolution was also accompanied by a number of Explanations of Votes, including from Council of Europe member States, some noting the lack of international consensus on the legal basis of the right and that political recognition did not have legal effect.<sup>57</sup> At the same time, the European Union “welcomed the adoption of this important resolution on the human right to a clean, healthy and sustainable environment, which is important for the enjoyment of all human rights”.<sup>58</sup>

38. The UNGA 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 and that the right is related to other rights and existing international law. Likewise, its preambular paragraphs also recognise 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. The entire text of UNGA Resolution 76/300 can be found in Appendix IV of this report.

39. On 4 April 2023, the HRC adopted by consensus resolution 52/23 on the right to a clean, healthy and sustainable environment.<sup>59</sup> The resolution, amongst other things, 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.<sup>60</sup>

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<sup>56</sup> See Addendum to the draft resolution of the General Assembly on the human right to a clean, healthy and sustainable environment (28 July 2022), UN Doc. A/76/L.51/Add.1 (2022) Albania, Andorra, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lichtenstein, Lithuania, Luxembourg, Monaco, Montenegro, Netherlands, Portugal, Republic of Moldova, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland and Ukraine.

<sup>57</sup> 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 standard of physical and mental health”, see <https://www.gov.uk/government/speeches/explanation-of-vote-on-resolution-on-the-right-to-a-clean-healthy-and-sustainable-environment>; 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”., 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>.

<sup>58</sup> See statement of the European Union, A/76/PV.97, p. 18.

<sup>59</sup> 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.

<sup>60</sup> UN HRC resolution, The human right to a clean, healthy and sustainable environment, 4 April 2023, A/HRC/52/7.

40. Judicial and non-judicial bodies within the UN system are also interpreting or being requested to interpret and apply existing international human rights obligations with respect to environmental harm, including in the context of climate change.

41. On 29 March 2023, the UNGA 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.<sup>61</sup> 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).

42. In their oversight of States' compliance with the core human rights treaties, such as the ICESCR,<sup>62</sup> the ICCPR,<sup>63</sup> the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), United Nations human rights treaty bodies have applied human rights to environmental issues.

43. The UN Committee on Economic, Social, and Cultural Rights (CESCR) has interpreted the right of everyone to the enjoyment of the highest possible standard of health (Article 12)<sup>64</sup> and the right to an adequate standard of living (Article 11)<sup>65</sup> 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."<sup>66</sup>

44. 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.<sup>67</sup> Moreover, it stated 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 the right to life".<sup>68</sup> In 2019,

<sup>61</sup> 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; see also <http://www.qil-qdi.org/an-advisory-opinion-on-climate-emergency-and-human-rights-before-the-inter-american-court-of-human-rights/>

<sup>62</sup> United Nations (General Assembly). "International Covenant on Economic, Social, and Cultural Rights." Treaty Series, vol. 999, Dec. 1966.

<sup>63</sup> United Nations (General Assembly). (1966). International Covenant on Civil and Political Rights. Treaty Series, 999, 171.

<sup>64</sup> CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12).

<sup>65</sup> CESCR General Comment No. 15: The Right to Water.

<sup>66</sup> General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (2000), para. 15.

<sup>67</sup> General comment no. 36 para. 26.

<sup>68</sup> *Ibid.* para 62.

five treaty bodies issued a joint statement on climate change calling for States to implement policies aimed at reducing emissions so as to realise the objectives of the Paris Agreement.<sup>69</sup>

45. UN treaty bodies are increasingly being asked to decide on issues concerning environmental degradation.<sup>70</sup> In *Portillo Cáceres and others v. Paraguay*, The UN Human Rights Committee in 2019 held that Paraguay had violated its obligations under the right to life and the right to private and family life, when it failed to adequately regulate large-scale spraying with toxic agrochemicals and investigate the death of an agricultural worker exposed to such chemicals.<sup>71</sup> In the 2020 case of *Teitiota v. New Zealand*, the author alleged that the rejection of his application for refugee status in New Zealand violated his right to life under the Covenant by removing him in September 2015 to Kiribati, which climate change would ultimately render uninhabitable. The UN Human Rights Committee found the complaint admissible on the basis that "for the purpose of admissibility, that due to the impact of climate change and associated sea level rise on the habitability of Kiribati and on the security situation on the islands, he faced a real risk of impairment to his right to life under article 6 of the Covenant".<sup>72</sup> After considering the merits of the complaint, the Committee concluded that "without prejudice to the continuing responsibility of the State party to take into account in future deportation cases the situation at the time in Kiribati and new and updated data on the effects of climate change and rising sea levels thereupon, the Committee is not in a position to hold that the author's rights under article 6 of the Covenant were violated upon his deportation to Kiribati in 2015".<sup>73</sup> In *Sacchi et al. v Argentina, Brazil, France, Germany and Turkey*, the UN Committee on the Rights of the Child, the applicants alleged that 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. The complaint was found inadmissible for failure to exhaust local remedies, though the Committee made extensive obiter remarks, including on extraterritorial jurisdiction and reasonably foreseeable harm.<sup>74</sup> In September 2022, the UN Human Rights Committee found that Australia's failure to adequately protect Indigenous Peoples in the Torres Islands 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.<sup>75</sup>

46. 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.<sup>76</sup> 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".<sup>77</sup> Section II of the General Comment describes the

<sup>69</sup><https://www.ohchr.org/en/statements/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human-rights-and>; see also *Portillo Cáceres and others v. Paraguay*, No. 2751/2016 (2019), para. 7.5. in which 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.

<sup>70</sup> 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).

<sup>71</sup> *Portillo Cáceres and others v. Paraguay*, No. 2751/2016 (2019), para. 7.5.

<sup>72</sup> *Teitiota v New Zealand*, Human Rights Committee, 24 October 2019, para. 8.6.

<sup>73</sup> *Ibid.*, paras. 9.14-10.

<sup>74</sup> UN Committee on the Rights of the Child, CRC/88/D/104/2018, paras. 8 and 7.

<sup>75</sup> 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.

<sup>76</sup> UN Committee on the Rights of the Child, CRC/C/GC/26.

<sup>77</sup> *Ibid.* para 11.



connections between the environment and provisions of the Convention on the Rights of the Child (CRC). Section III concerns the right to a clean, healthy and sustainable environment and will be discussed in more detail in Section C below. Section IV is devoted to general measures of implementation, and Section V deals with climate change.

47. UN special procedures have addressed human rights and environmental concerns<sup>78</sup>. The HRC established the mandate for the Independent Expert on human rights and the environment in 2012<sup>79</sup> which was subsequently extended and converted to a Special Rapporteur in 2015.<sup>80</sup> The mandate of the UN Special Rapporteur on human rights and the environment is to “examine the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; promote best practices of the use of human rights in environmental policymaking; identify challenges and obstacles to the global recognition and implementation of the right to a safe, clean, healthy and sustainable environment; and conduct country visits and respond to human rights violations”.<sup>81</sup> In 2018, the Special Rapporteur presented Framework Principles on Human Rights and the Environment, which set out the Special Rapporteur’s understanding of “basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment”<sup>82</sup> and considers “the next steps in the evolving relationship between human rights and the environment”.<sup>83</sup> A series of reports have also been published by the current and former Special Rapporteur on human rights and the environment.<sup>84</sup>

48. The United Nations Guiding Principles (UNGPs) can be considered the milestone document on the responsibility of businesses to respect human rights. The UNGPs rest on three pillars: (1) States’ existing obligation to respect, protect and fulfil human rights and fundamental freedoms (“the State duty to protect human rights”); (2) corporate responsibility to respect human rights, including the exercise of due diligence (“the corporate responsibility to respect human rights”); and (3) the responsibility of States and business enterprises to ensure those affected by human rights abuses have access to effective remedy (“access to remedy”). The UNGPs and the OECD Guidelines on Multinational Enterprises on Responsible Business Conduct<sup>85</sup> are the main international standards for responsible business conduct. The OECD Guidelines, updated in 2023, recommend that enterprises conduct due diligence to assess and address adverse human rights and environmental impacts associated with their operations, products and services. Chapter VI on the environment is aligned with the business responsibility to respect human rights established in the UN Guiding Principles on Business and Human Rights, and sets out the expectation that enterprises conduct due diligence on environmental impacts, including in relation to climate change and biodiversity. Moreover, adherent States to the OECD Guidelines are

<sup>78</sup> See also the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes which 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. In 2011, the UN Human Rights Council recognized the danger of hazardous substances and waste to human rights. It expanded the mandate to cover the entire life-cycle of such products. The mandate was last renewed in 2020 through resolution A/HRC/RES/45/17

<sup>79</sup> HRC resolution 19/10.

<sup>80</sup> A/HRC/RES/46/7.

<sup>81</sup> Special Rapporteur on human rights and the environment, OHCHR.

<sup>82</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/HRC/37/59 (2018), paragraph 1.

<sup>83</sup> *Ibid.*

<sup>84</sup> See e.g. clean air (A/HRC/40/55), safe and sufficient water (A/HRC/46/28), non-toxic environments (A/HRC/52/33), a safe climate (A/74/161), healthy ecosystems and biodiversity (A/75/161), and healthy and sustainably produced food (A/76/179), and the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/HRC/40/55).

<sup>85</sup> <https://mneguidelines.oecd.org/mneguidelines/>

obliged to establish a National Contact Point to serve as a non-judicial grievance mechanism in cases of alleged violations.<sup>86</sup>

49. As can be seen from the list above, UN treaty bodies and special procedures are engaged on a wide scale with the examination of the relationship between human rights and the protection of the environment with a special focus on environmental degradation and the triple planetary crisis.<sup>87</sup> It should be noted, however, that, these mechanisms do not adopt legally binding decisions.

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

#### *The European Convention on Human Rights*

50. While the Convention does not mention the 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.<sup>88</sup>

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 caselaw under Article 8 (right to respect for private and family life and home) 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 and under Article 11, (freedom of assembly and association) it has dealt with the freedom of assembly and association to pursue collective action in environmental matters. The Court's caselaw on Article 1 of Protocol No.1 to the Convention (protection of property) covers issues 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), the Court has examined the issue of the right to an effective remedy for alleged violations of the substantive rights listed above.

52. It should be noted that the Court develops its interpretation of the text of the Convention and its Protocols in response to legal, social, ethical or scientific developments, by application of the "living instrument doctrine" according to which "the Convention [...] must be interpreted in the light of present-day conditions".<sup>89</sup> This allows the Court to respond to new challenges if their subject-matter falls within the scope of the Convention.

<sup>86</sup> <https://mneguidelines.oecd.org/ncps>

<sup>87</sup> Appendix III 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.

<sup>88</sup> See [https://www.echr.coe.int/documents/fs\\_environment\\_eng.pdf](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).

<sup>89</sup> *Tyrer v. the United Kingdom*, application no. 5856/72, judgment of 25 April 1978, § 31.

53. As demonstrated above, the Convention protects the environment only insofar as it has an impact on Convention rights.<sup>90</sup> The operation of the procedural requirements and the application of the substantive standards for bringing a case before the Court limit the extent of indirect protection. The following section will examine the operation of these requirements in environmental cases. The scope and application of some of these procedural requirements and substantive standards is currently at issue in climate litigation before the Court.<sup>91</sup>

a) *Operation of Procedural Requirements in Environmental Cases*

54. Beginning with the procedural requirements, these mainly relate to the establishment of the Court's jurisdiction and the admissibility criteria.

55. The first procedural requirement for introducing an application before the Court concerns jurisdiction. Article 1 of the Convention states that a Contracting Party must 'secure' the protected rights and freedoms to persons within its "jurisdiction". National jurisdiction under Article 1 is primarily territorial, i.e. the victim is within the national territory of the State. If the victim is outside a State's territory, extraterritorial jurisdiction may exceptionally be established if (i) the State exercises power (or control) over the victim (personal concept of jurisdiction), or (ii) the State exercises effective control over the territory in which the alleged violation occurs (spatial concept of jurisdiction).<sup>92</sup> The Convention's jurisdictional requirements may limit its competence to address environmental cases, in particular in cases of transboundary environmental harm, where pollution originating in one state has an impact on individuals in another.<sup>93</sup>

56. The second procedural requirement, linked to the admissibility of an application before the Court, concerns victim status under Article 34. Under this article, the Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation. This excludes the possibility of *actio popularis*, i.e. public-interest applications that do not directly concern the applicant's individual rights. For this and other reasons, applications cannot be made by or on behalf of future generations.

57. A third procedural requirement concerns the exhaustion of local remedies. The Court may only deal with the matter after all domestic remedies have been exhausted.<sup>94</sup> The application of this requirement in environmental cases, such as those relating to climate change is currently in dispute before the Court.

b) *Application of Substantive Convention Standards to Environmental Cases*<sup>95</sup>

<sup>90</sup> CDDH-ENV(2023)10 - 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) (CDDH (Summary), Keller, p. 2.

<sup>91</sup> For example, the scope and application of jurisdiction, victim status and/or exhaustion of domestic remedies are in question in three climate change cases pending before the Grand Chamber of the Court; see *Duarte Agostinho and Others v. Portugal and 32 Others*, application no. 39371/20, *Carême v. France*, application no 7189/21 and *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, application no. 53600/20.

<sup>92</sup> Specific circumstances of a procedural nature have also been used to justify the application of the Convention in relation to events which occurred outside the respondent State's territory, however, this is not relevant in the present context, see *M.N. and Others v. Belgium* (dec.) [GC], no. 3599/18, 5 May 2020 § 107.

<sup>93</sup> Summary, Raible, p. 5-6.

<sup>94</sup> Article 35 (1) of the Convention.

<sup>95</sup> See Article 35 (1) of the Convention.

58. The first substantive standard concerns the applicability of Convention rights. In the case of *Kyrtatos v. Greece*, 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”.<sup>96</sup> The Court recalled “its established case-law, that severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health.”<sup>97</sup> It stated that, “even assuming that the environment has been severely damaged by the urban development of the area, the applicants have not brought forward any convincing arguments showing that the alleged damage to the birds and other protected species living in the swamp was of such a nature as to directly affect their own rights”.<sup>98</sup> Article 8 of the Convention is thus not applicable every time environmental harm or the risk thereof occurs.<sup>99</sup> This jurisprudence is an expression of the general principle that Convention rights are only applicable if individuals are directly affected. The applicant must demonstrate a risk of an actual or imminent violation of their rights under the Convention that would cause them actual or potential harm. In the environmental context, individuals are considered to be “personally affected” by the measure in question if they find themselves in a situation “of high environmental risk”, in which the environmental threat “becomes potentially dangerous for the health and well-being of those who are exposed to it”.<sup>100</sup>

59. The second substantive standard concerns the establishment of a Convention violation. It is argued that in environmental cases in general, and pollution cases in particular, evidentiary difficulties arise due to the complex interlinkages between environmental harm and the health risks or effects that an applicant must demonstrate. These challenges have been recognised by the Court in, for example, cases of pollution when it stated that “severe pollution adversely affect public health in general, [...] it is often impossible to quantify its effects in each individual case, and distinguish them from the influence of other relevant factors, such as age, profession, etc.”<sup>101</sup> For the Court, in assessing evidence, the general principle has been to apply the standard of proof “beyond reasonable doubt”; such proof may follow from “the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.”<sup>102</sup> The Court may not always apply the principle that the party making an allegation must prove that allegation, however, notably in circumstances where only the respondent Government has access to information capable of corroborating or refuting the applicant's allegations.<sup>103</sup> While the Court has emphasised the importance of the precautionary principle in *Tatar*,<sup>104</sup> in newer cases the Court has not developed further its use of this principle.<sup>105</sup>

<sup>96</sup> *Kyrtatos v. Greece*, application no. 41666/98, judgment of 22 May 2003, § 52.

<sup>97</sup> *Ibid.* para 52.

<sup>98</sup> *Ibid.* para 53.

<sup>99</sup> *Jugheli and Others v. Georgia*, no. 38342/05, § 62, 13 July 2017; and *Çiçek and Others v. Turkey*, (dec.), no. 44837/07, § 22, 4 February 2020

<sup>100</sup> *Cordella v Italy*, no. 54414/13, 54264/15, 24 January 2019, §104.

<sup>102</sup> *Fadeyeva v Russia* § 79.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Tătar v. Romania*, no. 67021/01, judgment of 27 January 2009, § 120; further references to the precautionary principle in the Court's case law may be found in the framework of Article 6 in *Folkman and Others v. Czech Republic* (dec.), 2006; in the framework of Article 8, *Asselbourg and Others v. Luxembourg* (dec.), 1999; *Aly Bernard et 47 autres personnes physiques ainsi que l'association Greenpeace-Luxembourg, v. Luxembourg* (dec.), 1999; *Sdružení Jihočeské Matky v. Czech Republic* (dec.), 2006.

<sup>105</sup> *Thibaut v. France* (dec.), 2022, § 40-48.

60. A third substantive standard is the weight given to environmental matters in the “fair balance” review of the Court. The Court considers that the protection of the environment, nature, forests, the coastline, threatened species, biological resources, the heritage and public health are matters of public interest. Therefore, an environmental argument can be used to justify interference with certain rights<sup>106</sup> for example the right to respect for property.<sup>107</sup>

61. In taking, for general-interest purposes, action amounting to an interference in the right to property, States enjoy a broad margin of appreciation with regard both to choosing the means of enforcement in achieving the aim in question and to appraising the proportionality of those means to the aim. The Court has emphasised that that is particularly the case where the general interest pursued concerns environmental protection.<sup>108</sup> Similarly the Court has pointed out that the margin of appreciation is broader where the alleged interference in the right to respect for property relates to spatial planning and environmental protection policies.<sup>109</sup> That said, in one judgment, the Court’s Grand Chamber pronounced a general principle, in the context of Article 11 of the Convention, pursuant to which where the aim is to protect “rights or freedoms” that are not set out in the Convention (in this case, hunting), only “indisputable imperatives” can justify interference with protected rights and freedoms.<sup>110</sup>

#### *The European Social Charter*

62. 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 clarify and put into practice the relationship between environmental protection and social rights, 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. That article 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.<sup>111</sup>

63. 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.”<sup>112</sup> The ECSR, similarly to the Court, is able therefore to respond to new challenges by the application of this interpretative doctrine.

<sup>106</sup> Guide on case-law of the Convention – Environment, para 163.

<sup>107</sup> Guide on case-law of the Convention – Environment, para 165 and *Hamer v. Belgium*, no. 1861/03, 27 November 2007, §79.

<sup>108</sup> Guide on case-law of the Convention – Environment, para.166; *Hamer v. Belgium*, 2007, § 78; *Depalle v. France* [GC], 2010, §§ 84 and 87; *Matczyński v. Poland*, 2015, §§ 105-106; S.C. *Fiercolect Impex S.R.L. v. Romania*, 2016, § 67; *Tumeliai v. Lithuania*, 2018, § 72.

<sup>109</sup> Guide on case-law of the Convention – Environment, para 166 and *Depalle v. France* [GC], 2010, §§ 84 and 87; *Malfatto and Mielle v. France*, 2016, § 64; *Barcza and Others v. Hungary*, 2016, § 46; *O’Sullivan McCarthy Mussel Development Ltd v. Ireland*, 2018, § 124; *Bērziņš and Others v. Latvia*, 2021, § 90.

<sup>110</sup> Guide on case-law of the Convention – Environment, para 159 and *Chassagnou and Others v. France* [GC], 1999, § 113). This principle has not been implemented or developed any further in the Court’s case-law.

<sup>111</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, complaint no.30/2005, decision on the merits of 6 December 2006, §§ 194-195, §202.

<sup>112</sup> *International Commission of Jurists v. Portugal*, Complaint No. 1/1998, 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.

64. The Charter does not have an individual complaints procedure, rather the ECSR monitors compliance with the ESC under two separate procedures: (i) through collective complaints lodged by the social partners and non-governmental organisations (collective complaints procedure) and (ii) through reports drawn up by States parties (reporting procedure). The collective complaints procedure was established by the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints. It entitles social partners and non-governmental organisations to lodge collective complaints concerning alleged violations of the Charter in States which have ratified the additional protocol.<sup>113</sup>The complaint is examined by the ECSR, which declares it admissible if the formal requirements have been met.<sup>114</sup> The ECSR then takes a decision on the merits of the complaint, which it transmits to the parties concerned and to the Committee of Ministers in a report. Based on the report, the Committee of Ministers adopts a resolution. In case violations have been found by the ECSR, the Committee of Ministers may recommend that the State concerned take specific measures to bring the situation into line with the Charter.<sup>115</sup>

65. As to the reporting procedure, States Parties regularly submit a report on the implementation of the Charter in their law and practice. National reports are examined by the ECSR, which determines whether the national situations they describe comply with the Charter. In this framework, the ECSR adopts conclusions which are published every year. Insofar as they refer to binding legal provisions and are adopted by a monitoring body established by the Charter, the conclusions and decisions of the ECSR represent an authoritative interpretation of the Charter's provisions. States Parties have an obligation to cooperate with the Committee and its decisions and conclusions that arises from the application of the principle of good faith to the observance of all treaty obligations. The follow-up of the conclusions of the ECSR is ensured by the Committee of Ministers of the Council of Europe.

66. 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.<sup>116</sup> 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.

67. The Charter protects the environment only insofar as it has an impact on Charter rights. The procedural and substantive requirements for bringing a case before the Committee limit the extent of indirect protection. The following section will examine the operation of these requirements in environmental cases as far as it is possible considering the limited number of cases on the issue.

#### *Operation of Procedural Requirements in Environmental Cases*

<sup>113</sup> Organisations entitled to lodge complaints: trade unions and employers' organisations (national and international), international non-governmental organisations (INGOs) and national non-governmental organisations (NGOs) in certain circumstances according to Article 1 and 2 of the Additional Protocol to the ESC Providing for a System of Collective Complaints.

<sup>114</sup> Under Article 4 of the Additional Protocol, "complaints shall be lodged in writing, relate to a provision of the Charter accepted by the Contracting Party concerned and indicate in what respect the latter has not ensured the satisfactory application of this provision."

<sup>115</sup> The CM adopts such Recommendations to the State concerned by a two-third majority vote. Examples of Recommendations adopted by the CM to States following decisions in collective complaints may be consulted at: [Adopted texts - Committee of Ministers \(coe.int\)](#)

<sup>116</sup> CM(2022)114-final, 1444th meeting, 27 September 2022.

68. The first procedural requirement is the need for the respondent State to ratify the Additional Protocol of 1995 providing for a system of collective complaints. It is to be noted that there is a limited number of ratifications of the 1995 Additional Protocol to the Charter.<sup>117</sup>

69. The second procedural requirement concerns personal scope. According to the Appendix to the Charter,<sup>118</sup> the States Parties are not obliged to apply the provisions of the Charter to persons who are not their own nationals, 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. 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.<sup>119</sup>

#### *Application of Substantive Standards in Environmental Cases*

70. Under Article 11 of the Charter, 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,<sup>120</sup> and to protect the population against, for example, nuclear hazards<sup>121</sup> as well as against health risks related to asbestos.<sup>122</sup> 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.<sup>123</sup> The ECSR has also emphasised that States have positive obligations in order to combat air pollution.<sup>124</sup> 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.<sup>125</sup> 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.<sup>126</sup>

#### *Business and human rights*

71. Building on the UNGPs, within the Council of Europe, the CM/Rec(2016)3 on human rights and business expresses commitment to the national implementation of the UN Guiding Principles on Business and Human Rights, by aiming to provide specific guidance so as to assist member States in preventing and remedying human rights violations by business enterprises and also

<sup>117</sup> To date 16 States have accepted the collective complaints procedure: 14 States by ratification of the Additional Protocol and two States by notification to the Secretary General of the Council of Europe when they ratified the Revised Charter (under Article D paragraph 2 of the Revised Charter).

<sup>118</sup> Appendix to the European Social Charter (Revised), CETS 163, § 1.

<sup>119</sup> *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

<sup>120</sup> *Ibid.*, §§ 203, 209, 210 and 215.

<sup>121</sup> Conclusions XV-2 (2001), France; Conclusions XV-2 (2001), Denmark.

<sup>122</sup> Conclusions XVII-2 (2005).

<sup>123</sup> Conclusions 2013, Georgia.

<sup>124</sup> *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.

<sup>125</sup> *Ibid.*, §204.

<sup>126</sup> *International Federation of Human Rights Leagues (FIDH) v. Greece*, Complaint No. 72/2011, decision on the merits of 23 January 2013, §§ 150-152.

insists on measures to induce business to respect human rights. The Recommendation elaborates on access to judicial remedy and puts special emphasis on the additional protection needs of workers, children, Indigenous Peoples and human rights defenders.

#### iv. Human rights and environmental protection in the European Union

72. 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”.<sup>127</sup>

73. The EU and its member States are also parties to the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). The EU is implementing the provisions of the Aarhus Convention through various directives.<sup>128</sup> The EU's institutions ensure the implementation of the Aarhus Convention in their decision-making processes through Regulation No 1367/2006 (Aarhus Regulation).<sup>129</sup> 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.<sup>130</sup> Since 2005, the CJEU has ruled on approximately 50 cases related to access to justice in environmental matters, covering various aspects such as standing for individuals and environmental non-governmental organizations (ENGOS).<sup>131</sup> 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.<sup>132</sup>

74. The EU's European Ombudsman also plays an important role in the protection of the environment by focusing on ensuring transparency, accountability, and good governance within

<sup>127</sup> Article 37 of the Charter of Fundamental Rights.

<sup>128</sup> 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>.

<sup>129</sup> 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>.

<sup>130</sup> C-431/92 Grosskrotzenburg (1995), C-72/95 Kraaijeveld (1996), C-435/97 WWF (1999) and C-201/02 Delena Wells (2004).

<sup>131</sup> C-237/07 Janecek (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).

<sup>132</sup> 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/legal-content/EN/TXT/?qid=1596443911913&uri=CELEX:52019DC0640#document2>



the institutions and bodies of the EU.<sup>133</sup> 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 European Ombudsman.

75. Significant (upcoming) EU instruments include the Non-Financial Reporting Directive (NFRD), the Corporate Sustainability Reporting Directive (CSRD), and the Corporate Sustainability Due Diligence Directive (CSDD). The aim of the latter Directive is to foster sustainable and responsible corporate behavior and to anchor human rights and environmental considerations in companies' operations and corporate governance and will aim to ensure that businesses address adverse impacts of their actions, including in their value chains inside and outside Europe.

**Commented [A1]:** The Rapporteur notes that the CSDD is still not adopted and it is unclear at this stage whether it will ever be adopted.

## B. The right to a healthy environment

76. The present section first gives a brief overview of existing codifications, political endorsements and jurisprudential recognition of a 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.<sup>134</sup> Then the section aims 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. Brief overview of the right to a healthy environment at international level

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

78. At the regional level, the 1981 African Charter on Human and Peoples Rights (the African Charter) provides that "all peoples shall have the right to a general satisfactory environment favorable to their development" (art. 24). The 2003 Protocol to the African Charter on the Rights of Women in Africa, states that women "shall have the right to live in a healthy and sustainable environment" (art. 18) and "the right to fully enjoy their right to sustainable development" (art. 19). The 1988 Additional Protocol to the American Convention on Human Rights states that "everyone shall have the right to live in a healthy environment" (art. 11, para. 1). The 2004 Arab Charter on Human Rights includes a right to a "safe environment" as part of the right to an adequate standard of living that ensures well-being and a decent life (art. 38). The Human Rights Declaration adopted by the Association of Southeast Asian Nations (ASEAN) incorporates a "right to a safe, clean and sustainable environment" also an element of the right to an adequate standard of living (para. 28 (f)), this, however, is a soft law document.

<sup>133</sup>See [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](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.

<sup>134</sup> See Centre for International Environmental Law, 'Interpreting the Meaning of "Safe", "Clean", "Healthy", and "Sustainable", in the Right to Environment, 21 May 2020.

79. The right to a healthy environment also appears in certain environmental agreements regulating rights of access to environmental information, public participation in environmental decision-making, and access to justice in environmental matters: the Aarhus Convention<sup>135</sup> at the European level<sup>136</sup>, and, more recently, the Escazú Agreement<sup>137</sup> at the Latin American and Caribbean level. The aim of the Aarhus Convention is 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” by each Party guaranteeing “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 (art. 1). There are divergent views on whether the Aarhus Convention codifies procedural components of the right to a healthy environment. The preamble of the Escazú Agreement sets out among its objectives “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” (art 1).<sup>138</sup> Article 4(1) states that “[e]ach Party shall guarantee the right of every person to live in a healthy environment”.

80. Resolutions of international and regional organisations have also recognised the right. 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.<sup>139</sup> In 2021 “the right to a clean, healthy and sustainable environment” was politically recognised at the level of the United Nations,<sup>140</sup> in the Human Rights Council Resolution 48/13 of October 2021 (HRC Res 48/13),<sup>141</sup> which was followed by General Assembly Resolution 76/300 in July 2022 (GA Res 76/300).<sup>142</sup> HRC Res 48/13 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”;<sup>143</sup> and affirms that the promotion of the right requires the full implementation of the multilateral environmental agreements under the principles of international environmental law. In its essential elements<sup>144</sup>, GA Res 76/300 – 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 Res 48/13.

81. The Committee of Ministers of the Council of Europe in Recommendation CM/Rec(2022)20 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

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<sup>135</sup> 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), 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.

<sup>136</sup> The Aarhus Convention has been opened for ratification by any state and has been ratified already outside of Council of Europe member States by Guinea-Bissau in 2023.

<sup>137</sup> 2018 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean.

<sup>139</sup> 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, ...”

<sup>140</sup> 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.

<sup>141</sup> UN Doc. A/HRC/RES/48/13 of 18 October 2021 (HRC Resolution).

<sup>142</sup> UN Doc. A/RES/76/300 of 1 August 2022 (GA Resolution).

<sup>143</sup> HRC Resolution, 2.

<sup>144</sup> GA Resolution, 1 – 3.

human rights and is related to other rights and existing international law". The Recommendation 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.

82. Decisions adopted in the context of certain environmental agreements also refer to the right to a healthy environment. 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), and the UAE Consensus, which has, at its heart, the first Global Stocktake (GST), adopted by consensus at the 28th meeting of the Conference of the Parties to the UN Framework Convention on Climate Change (COP-28)<sup>145</sup>, the States reiterated their acknowledgement that "[p]arties should, when taking action to address climate change, respect, promote and consider their respective obligations on [...] the right to a clean, healthy and sustainable environment [...]".<sup>146</sup> Similarly, the Parties to the Convention on Biological Diversity (CBD), in the Kunming-Montreal Global Biodiversity Framework adopted at the 15th Conference of the Parties to the CBD, explicitly acknowledged the right as adopted in UNGA Res 76/300 and stressed that the Framework should "follow a human rights-based approach respecting, protecting, promoting and fulfilling human rights".<sup>147</sup>

83. As to soft law instruments, in its General Comment No. 26 on children's rights and the environment, with a special focus on climate change, the UN Committee on the Rights of the Child 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 rights. The UN Committee on Economic, Social, and Cultural Rights, in 2022, adopted General Comment No. 26 on Land and Economic, Social and Cultural Rights, holding that "[t]he sustainable use of land is essential to ensure the right to a clean, healthy and sustainable environment and to promote the right to development, among other rights". The UN Committee on the Elimination of Discrimination against Women in 2022, in General Recommendation No. 39 on the rights of Indigenous women and girls, also referred to the right to a clean, healthy and sustainable environment.

#### ii. Constituent elements of the right to a healthy environment

84. In 2018, the UN Special Rapporteur on human rights and the environment, John H. Knox, presented the Framework Principles on Human Rights and the Environment (Framework Principles) to the Human Rights Council, reflecting "the application of existing human rights obligations in environmental context".<sup>148</sup> The Framework Principles summarise how international human rights norms have been applied to environmental issues and "reflect States' existing human rights obligations".<sup>149</sup> The first two principles underline the relationship between human rights and environmental protection by inviting States to protect the environment to ensure the enjoyment of human rights and, as a corollary, to respect human rights in order to guarantee a healthy environment.<sup>150</sup>

<sup>145</sup> 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 and UAE Consensus Decision -/CM

<sup>146</sup> 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.

<sup>147</sup> Decision 1/COP.15: Kunming-Montreal Global biodiversity framework, CBD/COP/15/L.25, Annex, para. 14.

<sup>148</sup> 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.

<sup>149</sup> Ibid.

<sup>150</sup> Ibid. paras 4-6 (Framework Principles 1-2).

85. The Framework Principles “set out the basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment<sup>151</sup>”, 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;<sup>152</sup> (vii) non-discrimination in relation to enjoyment of a healthy environment;<sup>153</sup> (viii) the maintenance of non-retrogressive substantive environmental measures in relation to the progressive realization of economic, social, and cultural rights;<sup>154</sup> (ix) the monitoring and effective enforcement of compliance with the standards by private actors as well as governmental authorities;<sup>155</sup> (x) internal cooperation with respect to global or transboundary environmental harm that adversely affects human rights;<sup>156</sup> (xi) the protection of the rights of those who are particularly vulnerable to environmental harm, including environmental human rights defenders and indigenous peoples;<sup>157</sup> (xii) to provide a safe and enabling environment in which individuals, groups and organs of society that work on environmental issues can operate free from threats, harassment, intimidation and violence.<sup>158</sup> In addition, the Framework Principles suggest that States should fulfill their human rights obligations when pursuing sustainable development.<sup>159</sup>

86. In 2019, the UN Special Rapporteur on human rights and the environment, David Boyd, presented a report on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.<sup>160</sup> This report describes good practices followed by States in recognising the right to live in a safe, clean, healthy and sustainable environment and in implementing the procedural and substantive elements of the right. These good practices address both the procedural and substantive elements of the right. The procedural elements identified in the report are (i) access to information, (ii) public participation, and (iii) access to justice and effective remedies. The substantive elements include (i) clean air, (ii) a safe climate, access to safe water and adequate sanitation, (iii) healthy and sustainably produced food, (iv) non-toxic environments in which to live, work, study, and play, and (v) healthy biodiversity and ecosystems.<sup>161</sup>

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<sup>151</sup> Ibid. Para 8.

<sup>152</sup> Ibid, paras 10-30 (Framework Principles 5-10).

<sup>153</sup> Ibid. paras 7-9 (Framework Principle 3)

<sup>154</sup> Ibid. paras 31-33 (Framework Principle 11)

<sup>155</sup> Ibid, paras. 34-35 (Framework Principle 12).

<sup>156</sup> Ibid, paras. 36-39 (Framework Principle 13).

<sup>157</sup> Ibid, paras. 10-11, 40-53 (Framework Principles 4, 14, 15).

<sup>158</sup> Ibid.

<sup>159</sup> Ibid. Paras 54-55 (Framework Principle 6).

<sup>160</sup> 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’ (30 December 2019) UN Doc. A/HRC/43/53.

<sup>161</sup> See also the Information Note (January 2023) entitled “What is the Right to a Healthy Environment?” of the Office of the United Nations High Commissioner for Human Rights, the United Nations Environment Programme and the United Nations Development Programme, which references these procedural and substantive elements in chapter 3.2 (“The elements of the right to a healthy environment”).

87. As to relevant international jurisprudence, in the case of *Lhaka Honhat*<sup>162</sup>, the Inter-American Court of Human Rights (IACtHR) held that the right to a healthy environment includes an obligation to prevent environmental harm.<sup>163</sup> 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.”<sup>164</sup> 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.<sup>165</sup>

88. 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 contained in the Protocol of San Salvador: (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. 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, as it is the case of other economic, social and cultural rights.<sup>166</sup>

89. As to soft law instruments, General Comment No. 26 of the UN Committee on the Rights of the Child states that the right to a healthy environment “[...] is implicit in the Convention and directly linked to, in particular, the rights to life, survival and development, under article 6, to the highest attainable standard of health, including taking into consideration the dangers and risks of environmental pollution, under article 24, to an adequate standard of living, under article 27, and to education, under article 28, including the development of respect for the natural environment, under article 29.” The General Comment sets out the following substantive elements of the right to a “clean, healthy and sustainable environment”, including “clean air, a safe and stable climate, healthy ecosystems and biodiversity, safe and sufficient water, healthy and sustainable food and non-toxic environments”.<sup>167</sup> 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.

### Conclusions

90. Although the right to a clean, healthy and sustainable environment has been recognised politically at global level in UN General Assembly Resolution 76/300, However, this right is not yet protected as such in a treaty either at global or European level.<sup>168</sup> This means that there is not

<sup>162</sup> IACtHR, Case of the Indigenous Communities of the Lhaka Honhat Association v. Argentina, judgment of 6 February 2020.

<sup>163</sup> In its advisory opinion OC 23/17, the Inter-American Court of Human Rights describes the right to a healthy environment as “an autonomous right”.

<sup>164</sup> See above, para. 207 et seq.

<sup>165</sup> Ibid.

<sup>166</sup> “Progress Indicators: Second Group of Rights,” November 5, 2013, OEA/Ser.L/XXV.2.1, GT/PSS/doc.9/13, para. 26.

<sup>167</sup> Ibid. para 64.

<sup>168</sup> Divergent views exist on whether the Aarhus Convention protects a right to a healthy environment. It is important to note, however, that UN treaty bodies have already engaged with allegations of human rights violations in the context of environmental degradation as laid out in paragraphs 39-40 of this report.

yet a universal understanding amongst Council of Europe member States of the “nature, content and implications”<sup>169</sup> of the right.

91. There are some commonalities in substance between instruments. These comparisons can be found in the table under appendix III, with reference to, contain the suggested elements listed in the UN SR’s Framework Principles. However, the constituent elements of the right have not yet been the subject of international negotiations.

### iii. The right to a healthy environment in national law of Council of Europe member States

92. 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 27 member States that replied to this questionnaire are: Andorra, Armenia, Austria, Azerbaijan, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Italy, Latvia, Malta, Netherlands, Norway, Portugal, Slovak Republic, Slovenia, Sweden, Switzerland, Türkiye, and the United Kingdom.

93. The following survey which is based on the questionnaire does not draw an exhaustive picture. Rather, it provides a broad overview and identifies general trends based on the answers to the questionnaire.<sup>170</sup>

94. The CDDH-ENV asked Council of Europe member States the following questions: (i) is some explicit form of human right to a healthy 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?<sup>171</sup>

95. The right to a healthy environment is recognised at national level as a human right<sup>172</sup> in multiple Council of Europe member States.<sup>173</sup> Most of them qualify the right by including a reference to human well-being and/or human quality of life in the relative provisions, using formulae such as a “healthy environment”<sup>174</sup> or an environment “favorable/conducive to health”.<sup>175</sup> Other member States use adjectives such as “benevolent”<sup>176</sup> or “habitable”<sup>177</sup> in relation to the

<sup>169</sup> CM/Rec(2022)20, point 1.

<sup>170</sup> According to the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, some form of the right to a healthy environment is recognized in domestic law by more than 80 percent (156 out of 193) of States Members of the United Nations. See, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, HRC, 30 December 2019, A/HRC/43/53. According to information received by the CDDH-ENV from the aforementioned Special Rapporteur on 10 November 2023, the following States have legally recognised the right to a healthy environment: Antigua and Barbuda, Belize, Canada, Grenada, and Saint Lucia. This raises the Special Rapporteur’s number to 83 percent (161 out of 193) of States Members of the United Nations. Noting that this percentage includes States who have ratified the Aarhus Convention, about which divergent views exist on whether this Convention protects a right to a healthy environment.

<sup>171</sup> See Reference Document CDDH-ENV2022(09), 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.

<sup>172</sup> Some Council of Europe member States use different terminology such as fundamental rights.

<sup>173</sup> Andorra, Azerbaijan, Belgium, Croatia, Czech Republic, Finland, France, Georgia, Greece, Italy, Latvia, Malta, Netherlands, Norway, Poland, Portugal, Slovak republic, Slovenia, Türkiye.

<sup>174</sup> Belgium, Croatia, Finland, Georgia, Portugal, Slovenia, Türkiye.

<sup>175</sup> Azerbaijan, Czech Republic, Norway, Slovak republic.

<sup>176</sup> Latvia

<sup>177</sup> Netherlands.

environment and “decent”<sup>178</sup> or “enjoyable”<sup>179</sup> in relation to the quality of life. Rights holders are always human beings; no member State defines the environment or nature itself as a legal subject entitled to protection. In almost all of these member States, the Supreme and/or Constitutional Courts play an important role in applying and developing the right to a healthy environment.

96. All member States that recognise the right in their national law 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 recognised in all of these States. 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.<sup>180</sup> All member States that recognise the right in their national law leave a margin of appreciation to the legislator in deciding on the means used to fulfill their obligations.<sup>181</sup>

97. 41 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.<sup>182</sup>

98. A number of member States that do not recognise a human right to a healthy environment have codified environmental protection as a constitutional principle or objective.<sup>183</sup> These States describe environmental protection 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.<sup>184</sup> Some constitutions even accord primacy of environmental protection over other (constitutional) principles<sup>185</sup> or otherwise visibly prioritise environmental protection as a leading principle within their national constitutional framework.<sup>186</sup> This objective guarantee of environmental protection is open to judicial interpretation and is, as demonstrated by the answers to the questionnaire, shaped in the jurisprudence of the domestic courts. Member States that follow this objective model of environmental protection have reported substantial jurisprudential evolutions.<sup>187</sup> The combination of traditional fundamental/ human rights with a constitutional principle of environmental protection has been seen to generate results that are comparable to the effects of the protection of the human right to a healthy environment.<sup>188</sup>

99. As to justiciability, 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

<sup>178</sup> Croatia.

<sup>179</sup> Finland, Georgia.

<sup>180</sup> Czech Republic, Georgia, Greece, Latvia, Malta, Slovenia, Türkiye.

<sup>181</sup> Belgium, Croatia, Czech Republic, Finland, Italy, Norway, France, Georgia, Greece, Latvia, Norway, Portugal, Slovak Republic, Slovenia, Türkiye.

<sup>182</sup> Aarhus Convention ratification database:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsq\\_no=XXVII-13&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsq_no=XXVII-13&chapter=27&clang=en).

<sup>183</sup> Armenia, Austria, Germany, Switzerland.

<sup>184</sup> Also Sweden.

<sup>185</sup> 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.“

<sup>186</sup> Austria, Armenia, Switzerland.

<sup>187</sup> Austria, Germany, Switzerland.

<sup>188</sup> 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.

decisions<sup>189</sup> and – if generally permitted in the domestic judicial system – the constitutional review of legislative acts is possible.<sup>190</sup> Some member States give a right of action to non-governmental organisations and/or local and regional public territorial bodies<sup>191</sup>, others provide for the possibility of *actio popularis*<sup>192</sup>. Other member States which recognise a right to a healthy environment in their national law, however, do not conceive of the right as being justiciable.<sup>193</sup>

### Conclusions

100. At this point in time, while it appears that multiple Council of Europe member States have legally recognised the right in some form and that domestic courts have produced extensive jurisprudence on it, there is not yet a universal understanding amongst Council of Europe member States of the “nature, content and implications”<sup>194</sup> of the right.

## C. Possible rationales for a further instrument or instruments

101. In discussions on the need for a new instrument in academic literature, among the experts heard by the working group and in statements by civil society, several recurring lines of arguments for a new instrument can be identified. The following section sets out these rationales and analyses their underlying assumptions without endorsing them.

### i. Establishing legal recognition of the right to a healthy environment in the Council of Europe framework

102. There is no explicit legally binding recognition of the right to a healthy environment in international law generally and, in particular, within the Council of Europe’s framework. As explained above, unlike Europe, other regional human rights systems have already recognised the right to a healthy environment (see paragraphs 89 – 97 above). Establishing legal recognition of the right would clarify the relationship between environmental protection and human rights and would reinforce the understanding that human rights norms require protection of the environment, and that environmental protection depends on the exercise of human rights.

### ii. Shaping the content of the right to a healthy environment

103. As demonstrated above, there is no universal understanding of the material content of the right to a healthy environment amongst Council of Europe member States. In line with the recommendations under CM Rec 2022(20), it has been argued that a new instrument or instruments legally recognising the right to a healthy environment could possibly 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. In addition, should the material content of the right be spelled out in a possible new instrument it would allow member States to influence possible further developments related to the right to a healthy environment on the international level. Considering the increasing number of binding and non-binding instruments that refer to the relationship between human rights and the environment, or actively address the issue, it could be argued that now is an optimal time for member States to shape the content of

<sup>189</sup> Azerbaijan, France, Georgia, Greece, Italy, Slovak republic.

<sup>190</sup> Czech Republic, Georgia, Italy, Latvia, Portugal, Slovak republic, Slovenia.

<sup>191</sup> Norway, Poland, Slovak Republic, Slovenia.

<sup>192</sup> Latvia and Portugal.

<sup>193</sup> Belgium, Malta, Netherlands.

<sup>194</sup> CM/Rec(2022)20, para. 1.

**Commented [A2]:** The Secretariat suggests adding two specific rationales, for the following reasons. The current analytical approach in Chapter III gives little visibility to the fundamental reasons for distinguishing between the different types of binding instrument (variants of the two protocols and the standalone convention). There are perceived needs – amounting to separate rationales – for international oversight of States’ implementation of the right to a healthy environment in both its individual and collective forms and with respect to its civil/ political and economic/ social nature that are distinct and separate from both simple international legal protection of the right and enhanced protection of human rights generally against environmental impact.

Proposed rationales:

#### i. Providing international judicial oversight of national implementation of the right to a healthy environment

1. It has been argued that an international judicial oversight mechanism, accepting applications from persons claiming to be victims of violations of the right to a healthy environment and issuing binding judgments in their cases, is necessary to ensure effective and harmonious protection of the right to a healthy environment by States. For those, including the Parliamentary Assembly and civil society organisations, that have made such proposals, the urgency of the triple planetary crisis, the severity of its impact on human rights, and the need for an effective response by governments make this highest level of protection a necessity.

#### ii. Providing for a system of collective complaints alleging unsatisfactory realisation of the right to a healthy environment

2. It has been argued that the partially collective (or economic/ social) character of the right to a healthy environment and the often-widespread effects of environmental degradation may be best addressed through a monitoring mechanism that allows for collective complaints, rather than one that relies on individual applications whose scope may not reflect the full extent and context of the cause of the complaint.



right and its function in a European context. This would contribute greatly to legal certainty, an important consideration.

**iii. Addressing the operation of procedural requirements and the application of substantive standards in European Human Rights Law**

104. Another line of argumentation focuses on limitations in the human rights' system and in particular the system of the Convention and the Charter.

105. As noted in paragraphs 52–77, there is no explicit right to a healthy environment in the Convention or the Charter; the environment is only indirectly protected to the extent that environmental degradation results in a breach of human rights obligations stemming from the current provisions of the Convention. The current jurisprudence of the Court and the ECSR on the procedural requirements and the application of substantive standards that need to be met when litigating human rights cases relating to the environment before the Court and the ESCR limit the reach of the Convention and the Charter in environmental matters. It has been argued that these limits constitute gaps in the protection of human rights that could be addressed by a new instrument protecting the right to a healthy environment in a way that was not subject to the same procedural requirements and substantive standards. For example, cases involving the right to a healthy environment could be subject to different rules concerning territorial jurisdiction, NGO standing to bring public interest cases, and/or evidence, which, it is argued, would allow the Court to provide more effective overall protection to rights-holders.

**iv. Enhancing the international responsibilities of businesses for the environmental impact of their activities<sup>195</sup>**

106. There are different instruments on business and human rights such as the UNGPs, the OECD Guidelines for Multinational Enterprises or CM/Rec(2016)3 on human rights and business. Further environmental and human rights due diligence standards for business enterprises are still under development on international, regional and national levels.<sup>196</sup> It has been argued that a new instrument containing comprehensive environmental human rights due diligence standards for companies and in particular provisions on access to remedies could enhance the responsibility or accountability of businesses. An international [legally binding] mechanism that could provide victims of corporate environmental human rights violations with access to a remedy, such as some form of alternative dispute resolution, does not yet exist. It has been argued that these elements could potentially be addressed by the Council of Europe, while emphasizing and strengthening synergies with existing systems and instruments such as the UNGPs, the OECD Guidelines for Multinational Enterprises, OECD Due Diligence Guidance for Responsible Business Conduct, applicable regional agreements, existing legislation at national and EU level and sectoral approaches, taking into account developments at international level such as the work of the UN Open-Ended Working Group on transnational corporations and other business enterprises with respect to human rights.

**v. Ensuring that rights' holders receive greater protection of their rights against environmental degradation and the effects of the triple planetary crisis**

<sup>195</sup> The CDDH has explicitly requested the present drafting group to address the issue of the responsibility of businesses.

<sup>196</sup> See for example, the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (<https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>)

107. Another rationale that has been put forward is to ensure that rights holders can seek accountability for violations of the right to a healthy environment. A new instrument or instruments on human rights and the environment could create a legal framework that provides rights holders with procedural tools to enforce the right to a healthy environment, thereby providing accountability for States' actions or inactions that violate the right which in turn could contribute to preventing violations of this right. These preventative and protective aspects of the right are particularly important for those who are most at risk from environmental harm, including women, children, young people, Indigenous Peoples and local communities, persons living in poverty, persons with disabilities, older persons, migrants, displaced people, and other groups in vulnerable situations.

**vi. Encouraging the further development of jurisprudence on environmental degradation and the triple planetary crisis**

108. It has been argued that a new instrument or instruments on human rights and the environment could contribute to a clear normative framework for the Court and/or the ECSR to tackle environmental issues by allowing their environment-related jurisprudence to develop and to address more efficiently the issue of environmental degradation and the triple planetary crisis in relation to human rights.<sup>197</sup> In a nutshell, this rationale for a new instrument centres on providing clarity and coherence for the further development of the Court's jurisprudence and the decisions and conclusions of the ECSR on environmental protection and consequently contributes to legal certainty.

**vii. Enhancing protection for human rights defenders in environmental matters ("environmental human rights defenders")**

109. In addition, it has been argued that a new instrument or instruments on human rights and the environment could enhance protection for environmental human rights defenders.

110. Despite the legal protection offered by different human rights systems, environmental human rights defenders are a particularly high-risk group of human rights defenders in the world.<sup>198</sup> Many human rights bodies and organisations, including the Council of Europe Commissioner for Human Rights,<sup>199</sup> have issued recommendations as to how stakeholders might better protect and support their work.<sup>200</sup> The Meeting of the Parties to the Aarhus Convention decided in 2021 to establish a rapid response mechanism to protect environmental defenders, and decided in June 2022 to elect Michel Forst, the former UN Special Rapporteur on human

<sup>197</sup> See for e.g. PACE, Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment, report from Mr José MENDES BOTA, doc. 12003, 11 September 2009, §8-9.

<sup>198</sup> Global Witness publishes an annual report on the number of killings of environmental defenders. The most recent report, entitled *Last line of Defence*, was published in September 2021 and is available at [https://www.globalwitness.org/documents/20191/Last\\_line\\_of\\_defence\\_-\\_high\\_res\\_-\\_September\\_2021.pdf](https://www.globalwitness.org/documents/20191/Last_line_of_defence_-_high_res_-_September_2021.pdf). [update to 2023].

<sup>199</sup> See the Commissioner's Human Rights comment "Let us make Europe a safe place for environmental human rights defenders" at <https://www.coe.int/en/web/commissioner/-/let-us-make-europe-a-safe-place-for-environmental-human-rights-defenders>.

<sup>200</sup> See, e.g., 2016 Report of the Special Rapporteur on human rights defenders, UN Doc. A/HRC/31/55; Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, UN Doc. A/HRC/25/55 (23 December 2013); Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/68/262, (5 August 2013); Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples, UN Doc. A/HRC/24/41 (1 July 2013); Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/29/25 (28 April 2015).

rights defenders, to be the first special rapporteur in this new system. Recognising the right to a healthy environment could serve as a catalyst for establishing a safe and enabling environment for environmental human rights defenders in practice for example by allowing environmental human rights defenders to access programmes designed for human rights defenders.<sup>201</sup>

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

111. Some Council of Europe member States do not recognise a constitutional or legislative right to a healthy environment. It is argued that the effects of the recognition of the right to a healthy environment at the international level have been shown to indirectly affect national constitutional, environmental, and human rights law and produce the following legal and environmental benefits: (i) stronger environmental laws and policies; (ii) improved implementation and enforcement; (iii) greater citizen participation in environmental decision making; (iv) increased accountability; (v) reduction in environmental injustices; (vi) a level playing field with social and economic rights; and (vii) better environmental performance.<sup>202</sup> It has been argued that a new instrument or instruments 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.<sup>203</sup>

**ix. Responding to the expectations of civil society**

112. Europe has a history of environmental activism and climate action in a variety of forms including youth climate movements.<sup>204</sup> In particular, as noted above, civil society organisations have called 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 legally binding, autonomous right to a clean, healthy and sustainable environment through an additional protocol to the European Convention on Human Rights."<sup>205</sup> The European Network of National Human Rights Institutions (ENNHRI) has also expressed its support for a binding instrument on the right to a healthy environment.<sup>206</sup> Such an instrument would respond to the expectation of these organisations.

**x. Fulfilling the Council of Europe's mandate**

113. It has been argued that a new instrument on human rights and the environment would directly respond to the mandate that was given to the Council of Europe in its Statute.<sup>207</sup> Article 1 of the Statute states that "[t]he aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress" and that "[t]his aim shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and

<sup>201</sup> Summary, Knox, p 5.

<sup>202</sup> Boyd, D. (2018). Catalyst for Change: Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment. In J. Knox & R. Pejan (Eds.), *The Human Right to a Healthy Environment* (pp. 17-41). Cambridge: Cambridge University Press.

<sup>203</sup> Summary, Knox, p 5.

<sup>204</sup> See the CoE Commissioner's Report "Environmental Rights Activism and Advocacy in Europe: Issues, Threats, Opportunities" <https://rm.coe.int/environmental-rights-activism-and-advocacy-in-europe-issues-threats-op/1680a1e360>

<sup>205</sup> See <https://cure-campaign.org/wp-content/uploads/CSSDeclarationFinal.pdf> (at point 6).

<sup>206</sup> See <https://ennhri.org/wp-content/uploads/2021/11/ENNHRI-contribution-to-CDDH-ENV.pdf>

<sup>207</sup> Statute of the Council of Europe (ETS No. 001)

administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms". Moreover, it would be one possible way to follow up on the Reykjavik Declaration.<sup>208</sup>As explained in paras 19–24, environmental degradation and the triple planetary can directly impact the enjoyment of human rights. A new instrument on human rights and the environment under the aegis of the Council of Europe would be in line with the aims of the organisation as it would contribute to greater unity between its member States in their responses to this common threat and to the fulfillment of the Council of Europe's mandate to ensure that rights are protected in a coherent, consistent manner across member States, and to thereby facilitate their economic and social progress.

### Conclusions

114. The rationales used in academic literature, among the experts heard by the working group and in statements by civil society to demonstrate the need for a further instrument are diverse. Policy makers will need to decide whether they consider these rationales to be relevant and whether they want to endorse some or all of them. If they do endorse some or all of them and thus conclude that there is the need for a new instrument, the respective weight they attach to the rationales they endorse will have implications for deciding on the specific instrument to be adopted.

### III. The feasibility of a further instrument or instruments

115. The following section sets out possible further Council of Europe instruments and how they may address the relationship between human rights and the environment. The proposals reflected here emanate from Council of Europe bodies, 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 Chapter II could be covered by the respective instrument. This may allow member States to focus on those options that respond to rationales they consider to be particularly relevant. Finally, it sets out further considerations for each of the instruments. The compilation does not imply an endorsement of any consideration by the CDDH. The proposals examined are as follows:

1. An additional Protocol to the ECHR
2. An additional Protocol to the ESC
3. Standalone Convention on Human Rights and the Environment
4. Self-standing monitoring mechanism
5. Inclusion of environmental protection in the preamble of the ECHR
6. Inclusion of environmental protection in the preamble of the ESC
7. Non-binding instrument recognising the right to a healthy environment at the level of the Council of Europe
8. Combination of different instruments.

**Commented [A3]:** Rapporteur's note: the Group will need to decide whether to include a list of rationales under each option or present it another way.

<sup>208</sup> In Appendix V of the Reykjavik Declaration a commitment was by the Heads of State and Government of the Council of Europe to "strengthen [their] work at the Council of Europe on the human rights aspects of the environment based on the political recognition of the right to a clean, healthy and sustainable environment as a human right, in line with United Nations General Assembly Resolution 76/300 "The human right to a clean, healthy and sustainable environment".

## 1. Additional Protocol to the European Convention on Human Rights

116. An additional protocol to the European Convention on Human Rights codifying the right to a healthy environment has been proposed, in various forms, since 1970. Over the past 25 years, the Parliamentary Assembly has adopted several recommendations to the Committee of Ministers<sup>209</sup> including the proposal examined below, following earlier suggestions in academic work.<sup>210</sup>

117. An additional protocol to the Convention could allow individuals access to the Court to enforce their rights in relation to environmental issues, including its robust enforcement mechanism. It is also one of the options that is directly responsive to civil society expectations that the Council of Europe will adopt an instrument establishing binding legal protection of the right to a healthy environment.

118. The core element of any additional protocol to the Convention would be legal protection of the right to a healthy environment. Beyond that, it could be possible to include also constituent elements of the right and/or additional elements relating to procedural requirements and the application of substantive standards in environmental cases (as referred to in paragraphs 49-69 above). Consequently, three conceptual models for an additional protocol may be considered: (i) codification of the right to a healthy environment in general terms; (ii) codification of the right to a healthy environment including its possible constituent elements; and (iii) codification of the right to a healthy environment including both constituent elements and additional elements relating to the operation of procedural requirements and the application of substantive standards in environmental cases (referred to as “additional elements”).

119. The additional elements could notably include provisions on territorial jurisdiction, victim status/ NGO standing before the Court, evidentiary standards, and environmental human rights defenders.<sup>211</sup> These elements can themselves be distinguished from one another and need not all be taken together as an indissociable package.

### A. Considerations related to the identified rationales

#### (i) **Model I (basic model): a protocol to the Convention codifying the right to a healthy environment in general terms**

##### a. Possible content

120. This proposal would simply codify the right to a healthy environment in general terms. It would not specify its constituent elements or involve additional elements relating to the operation of procedural requirements and the application of substantive standards.

##### b. Covered rationales

<sup>209</sup> PACE. 1999. Recommendation 1431: Future action to be taken by the Council of Europe in the field of environmental protection; PACE. 2003. Recommendation 1614: Environment and human rights; PACE 2009. Recommendation 1885: Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment.

<sup>210</sup> See the list presented in PACE, Environment and human rights, report from Mrs Cristina Agudo, doc. 9791, 16 April 2003. More recently, see Harry Balfour-Lynn and Sue Willman, Environmental Rights Recognition Project, “The right to a healthy environment: The case for a new Protocol to the European Convention on Human Rights” (King’s College London, 2022), p. 21.

<sup>211</sup> See Summary, Keller, p.3. and Moutquin, p. 7.

121. This proposal could cover almost all rationales, with the following (partial) exceptions. Without specifying the constituent elements of the right to a healthy environment, member States could not actively shape the content of the right. Instead, this would be shaped through the development of the Court's jurisprudence. It would also not address the operation of procedural requirements. Finally, while it could, through positive obligations of States, indirectly enhance the international accountability of businesses for the environmental impact of their activities, it would establish neither comprehensive environmental due diligence standards for businesses nor a right that is directly actionable against businesses. To summarise:

- ✓ Establishing legal recognition of the right to a healthy environment in the Council of Europe framework
- ✗ Shaping the content of the right to a healthy environment
- ✓ Encouraging the development of further jurisprudence on environmental degradation and the triple planetary crisis
- ✓ Addressing the operation of procedural requirements and the application of substantive standards in European human rights law
- ✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities
- ✓ Ensuring that rights' holders receive greater protection of their rights against environmental degradation and the effects of the triple planetary crisis
- ✓ Enhancing protection for human rights defenders working on environmental matters
- ✓ Improving national protection of the right to a clean, healthy and sustainable environment
- ✓ Responding to the expectations of civil society
- ✓ Fulfilling the Council of Europe's mandate

(ii) **Model II (basic model +): additional protocol codifying the right to a healthy environment and specifying its constituent elements**

**a. Possible content**

122. This proposal would codify the right to a healthy environment including its possible constituent elements.

**b. Covered rationales**

123. This model would also allow member States actively and directly to shape the content of the right. The further development by the Court of its jurisprudence on the application of existing Convention rights in environmental contexts would presumably be influenced by the way in which

an additional protocol specified the constituent elements of a new Convention right to a healthy environment.

124. However, this option would not address the operation of procedural requirements, and the application of substantive standards could only be affected to a certain extent through the Court developing its jurisprudence. Finally, while it could, through positive obligations of States, enhance the international accountability of businesses for the environmental impact of their activities, it would establish neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

- ✓ Establishing legal recognition of the right to a healthy environment in the Council of Europe framework
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- ✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities
- ✓ Ensuring that rights' holders receive greater protection of their rights against environmental degradation and the effects of the triple planetary crisis
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- ✓ Responding to the expectations of civil society
- ✓ Fulfilling the Council of Europe's mandate

(iii) **Model III (basic model ++): additional protocol codifying the right to a healthy environment and specifying its constituent elements, with additional elements**

**a. Possible content**

125. This model would codify the right to a healthy environment and specify its constituent elements and include also additional elements relating to the ECHR's operation of procedural requirements and the application of its substantive standards. Possible additional elements include provisions on the following: 1) the Court's territorial jurisdiction; 2) rules of evidence, to ease the burden of proof on applicants, 3) recognition of NGO standing, and 4) specific protection for environmental human rights defenders.

**b. Covered rationales**

126. By addressing procedural requirements and the application of substantive standards, this model could provide for enhanced protection of the right to a healthy environment, beyond that which would be possible under existing rules and procedures. Under the current understanding of territorial jurisdiction, the potential transboundary causes of environmental harm may leave victims unable to bring applications before the Court.<sup>212</sup> Amendments to the rules on jurisdiction addressing such issues could be envisaged, so as to make more effective the protection of individuals' right to a healthy environment. Furthermore, granting NGOs standing to bring public interest cases could improve access to justice for collective environmental interests. Easing the burden of proof on the applicants may also be considered as well as specific provisions on environmental human rights defenders to foster a safer and more enabling environment for them. Finally, whilst this model could, through positive obligations of States, indirectly enhance the international accountability of businesses for the environmental impact of their activities, including on a case-by-case basis concerning matters of due diligence, it would create neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

- ✓ Establishing legal recognition of the right to a healthy environment in the Council of Europe framework
- ✓ Shaping the content of the right to a healthy environment
- ✓ Encouraging the development of further jurisprudence on environmental degradation and the triple planetary crisis
- ✓ Addressing the operation of procedural requirements and the application of substantive standards in European human rights law
- ✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities
- ✓ Ensuring that rights' holders receive greater protection of their rights against environmental degradation and the effects of the triple planetary crisis
- ✓ Enhancing protection for human rights defenders working on environmental matters
- ✓ Improving national protection of the right to a clean, healthy and sustainable environment
- ✓ Responding to the expectations of civil society
- ✓ Fulfilling the Council of Europe's mandate

## **B. Further considerations relevant to an additional protocol to the Convention**

### **(i) General considerations**

127. An additional Protocol to the Convention could allow individuals access to the Court to enforce their rights in relation to environmental issues, including its robust enforcement

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<sup>212</sup> R Spano – Keynote Speech, Proceedings of the Council of Europe High-level Conference on the Right to a Clean, Healthy and Sustainable Environment in Practice, 3 May 2023, p. 27.



mechanism. It is also the only option that is directly responsive to the expectations of civil society, as expressed by observers in the CDDH-ENV drafting group.

128. However, some of the environmental issues, and particularly climate change issues, are multidimensional and involve issues of distributive justice potentially requiring a holistic approach. Some of these, such as the allocation of economic cost for environmental impact reduction measures or the level of environmental protection to be achieved involve policy choices that are arguably better made and implemented through the democratic process. There is a risk that the Court may not be considered legitimate to decide on such issues, which are widely considered to belong to the political sphere. Far-reaching Court judgments imposing policy choices on States based on the right to a healthy environment risk not being implemented. The introduction of the right to a healthy environment to the Convention system may result in an increased caseload for the Court<sup>213</sup> which may need additional financial resources.

129. Finally, the process of adopting a new protocol, and its entry into force, can be lengthy.<sup>214</sup>

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<sup>213</sup> Similar bodies include the European Commission for the efficiency of justice (CEPEJ) or the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

<sup>214</sup> For example, it took eight years for the Protocol no. 16 to the Convention (CETS no. 214) to be drafted and adopted by the Committee of Ministers and three years for the Protocol no. 15 to the Convention (CETS no. 213) (see their explanatory reports, available on the ECHR website).

**(ii) Model specific considerations**

130. It is important to note, that a Model III additional protocol would require the Court to apply different standards (see paragraphs [x]-[x]) in cases based on the right to a healthy environment. This could potentially lead to fragmentation of the Court's treatment of cases, depending on the right involved.

**2. Additional Protocol to the European Social Charter**

131. An Additional Protocol to the ESC codifying the right to a healthy environment has also been proposed.

132. It is important to note, that the ESCR has already interpreted Article 11 (the right to protection of health) of the ESC to include the right to a healthy environment. All of the proposals involving an additional protocol to the ESC therefore involve the recognition of the right to a healthy environment as a standalone right. They vary, however, in the extent to which they include additional elements relating to the effectiveness of the Charter system in protecting this right. Consequently, three options may be considered: (i) codification of the right to a healthy environment in general terms; (ii) codification of the right to a healthy environment including its possible constituent elements; and (iii) codification of the right to a healthy environment (including its constituent elements) and removing the restriction on the personal scope of the Charter and extend the reach of rights either for the Charter as a whole or solely for an additional protocol on the right to a healthy environment;<sup>215</sup> coupled with an option to accept the collective complaints procedure only in relation to the additional protocol (together referred to as "additional elements").

**A. Considerations related to the identified rationales**

**(i) Model I (basic model): a protocol to the ESC codifying the right to a healthy environment in general terms**

**a) Possible content**

133. This model would codify the right to a healthy environment in general terms, without specifying its constituent elements.

**b) Covered rationales**

134. As indicated below, this model could cover most of the rationales. Without specifying the constituent elements of the right to a healthy environment, member States could not actively shape the content of the right. Instead, this would be shaped through the subsequent decisions/interpretations of the ESCR. It would also not address the operation of procedural requirements. While it could, through positive obligations of States, enhance the accountability of businesses for the environmental impact of their activities, it would establish neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

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<sup>215</sup> See the Appendix to the European Social Charter, paragraph 1 second sentence: "*This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties.*"

- ✓ Establishing legal recognition of the right to a healthy environment in the Council of Europe framework
- ✗ Shaping the content of the right to a healthy environment
- ✓ Encouraging the development of further jurisprudence on environmental degradation and the triple planetary crisis
- ✗ Addressing the operation of procedural requirements and substantive standards in European human rights law
- ✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities
- ✓ Ensuring that rights' holders receive greater protection of their rights against environmental degradation and the effects of the triple planetary crisis
- ✗ Enhancing protection for human rights defenders working on environmental matters
- ✓ Improving national protection of the right to a clean, healthy and sustainable environment
- ✓ Responding to the expectations of civil society
- ✓ Fulfilling the Council of Europe's mandate

**(ii) Model II (basic model +): additional ESC protocol codifying the right to a healthy environment including its possible constituent elements**

**a) Possible content**

135. This model would codify the right to a healthy environment including its possible constituent elements (see paragraphs 83-90) without any additional elements.

**b) Covered rationales**

136. This model could cover all rationales to an even larger extent than the first option. By specifying the constituent elements of the right to a healthy environment, member States could actively shape the content of the right and give further guidance on the nature, content and implications of the right. The further development by the ESCR of its jurisprudence on the application of existing Charter rights in environmental contexts would presumably be influenced by the way in which an additional protocol specified the constituent elements of a new Charter right to a healthy environment.

137. This option would not address the operation of procedural requirements. Finally, while it could, through positive obligations of States, indirectly enhance the international responsibilities of businesses for the environmental impact of their activities, it would establish neither comprehensive environmental due diligence standards for companies nor directly actionable right against businesses.

- ✓ Establishing legal recognition of the right to a healthy environment in the Council of Europe framework
- ✓ Shaping the content of the right to a healthy environment
- ✓ Encouraging the development of further jurisprudence on environmental degradation and the triple planetary crisis
- ✗ Addressing the operation of procedural requirements and substantive standards in European human rights law
- ✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities
- ✓ Ensuring that rights' holders receive greater protection of their rights against environmental degradation and the effects of the triple planetary crisis
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- ✓ Fulfilling the Council of Europe's mandate

(iii) **Model III (basic model ++): additional ESC protocol codifying the right to a healthy environment (with potential constituent elements) and additional elements**

**a. Possible content**

138. This model would codify the right to a healthy environment including its possible constituent elements with additional elements. Without such additions, the impact of codification of the right might be limited as only a minority of States (16 out of 42) have accepted the collective complaints procedure. If the protocol allowed for acceptance of the collective complaints procedure only in relation to the right to a healthy environment, States Parties might be willing to accept it. The protection offered by the Charter is furthermore limited by the restriction on its personal scope. Possible additional elements therefore include provisions on the following: (i) removing the restriction on the personal scope of the Charter and extending the reach of rights either for the Charter as a whole or solely for an Additional Protocol on the right to a clean, healthy and sustainable environment;<sup>216</sup> (ii) an option to accept the collective complaints procedure only in relation to the additional protocol.

<sup>216</sup> See the Appendix to the European Social Charter, paragraph 1 second sentence: "This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties."

### b. Covered rationales

139. This model could cover most rationales to a fuller extent. Depending on the formulation, the operation of procedural requirements could be amended. The suggestion of removing the restriction on the personal scope of the Charter and that the additional protocol might allow for acceptance of the collective complaints procedure only in relation to this right could possibly address the issues concerning the operation of procedural requirements.

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- ✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities
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### B. Further considerations relevant to an additional protocol to the ESC

#### (i) General considerations

140. Decisions of the European Committee on Social Rights are non-binding on member States, therefore there is a higher risk of non-implementation as compared to binding judgments by a body such as the Court. The optional collective complaints procedure under the ESC would provide a way for non-governmental organisations and social partners to lodge complaints with respect to the right to a healthy environment, with no requirement for the complainant to have exhausted domestic remedies or itself to be a victim of the alleged violation. A non-binding monitoring mechanism, combining a reporting procedure and a complaints procedure, may arguably be more appropriate in an area where difficult policy choices need to be made. In addition, rights already protected under the Charter reflect both positive and negative obligations, which would be suitable for the protection of the right to a healthy environment. In addition, the introduction of the right to a healthy environment to the Charter system may result in an increase of the caseload of the ECSR, which may as a result need additional financial resource

141. Finally, the process of adopting a new protocol, and its entry into force, can be lengthy.<sup>217</sup>

**(ii) Model specific considerations**

142. It is important to note, that a Model III additional protocol would require the ESCR to apply different standards in cases based on the right to a healthy environment. This could potentially lead to fragmentation of the ESCR's treatment of cases, depending on the right involved.

**3. Standalone Convention on Human Rights and the Environment**

143. To address the linkages between human rights and the environment through robust standard-setting, the drawing-up of a standalone Council of Europe Convention on Human Rights and the Environment has been proposed. All of the proposals involving a standalone convention include the recognition of the right to a healthy environment as a standalone right. They vary, however, in the extent to which they include additional elements relating to the effectiveness of protecting this right. Consequently, two options may be considered: (i) codification of the right to a healthy environment including its possible constituent elements; and (ii) codification of the right to a healthy environment (including its constituent elements) coupled with additional elements as described below.

**A. Considerations related to the identified rationales**

**(i) Codification of the right to a healthy environment including its possible constituent elements**

**a) Possible content**

144. This model would codify the right to a healthy environment including its possible constituent elements (see paragraphs 49-69 above).

**b) Covered rationales**

145. This model would allow member States actively and directly to shape the content of the right. It would also contribute to the fulfillment of the Council of Europe's mandate to ensure that rights are protected in a coherent, consistent manner across member States.

- ✓ Establishing legal recognition of the right to a healthy environment in the Council of Europe framework
- ✓ Shaping the content of the right to a healthy environment
- ✗ Encouraging the development of further jurisprudence on environmental degradation and the triple planetary crisis

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<sup>217</sup> For example, it took eight years for the Protocol no. 16 to the Convention (CETS no. 214) to be drafted and adopted by the Committee of Ministers and three years for the Protocol no. 15 to the Convention (CETS no. 213) (see their explanatory reports, available on the ECHR website).

- ✗ Addressing the operation of procedural requirements and substantive standards European human rights law
- ✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities
- ✗ Ensuring that rights' holders receive greater protection of their rights against environmental degradation and the effects of the triple planetary crisis
- ✓ Enhancing protection for human rights defenders working on environmental matters
- ✓ Improving national protection of the right to a clean, healthy and sustainable environment
- ✗ Responding to the expectations of civil society
- ✓ Fulfilling the Council of Europe's mandate

**(ii) Codification of the right to a healthy environment (with its constituent elements) and additional elements**

146. This model would codify the right to a healthy environment including its possible constituent elements and further elements aimed at rendering the protection of the right more effective.

**a) Possible content**

147. Different options could be envisaged, such as a State reporting system as foreseen under Council of Europe treaties or UN human rights treaties. This could 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 differ from those under the ECHR and ESC. In addition to guaranteeing the right to a healthy environment, it could include provisions aimed at enhancing the accountability of businesses through, for example, due-diligence obligations for businesses or the creation of a mechanism of alternative dispute resolution that involves business entities. Another possibility would be to allow for requests for Advisory Opinions from the Court, as foreseen in the Oviedo Convention, which allows the Court to give advisory opinions on legal questions concerning the interpretation of that convention at the request of any of the Parties or the Council of Europe committee designated to this end by the Committee of Ministers (see Article 29).

**b) Covered rationales**

148. This model, due to its flexibility and depending on its content, could cover most of the rationales. It could indirectly encourage the development of further jurisprudence as the ECHR should be interpreted in harmony with other rules of international law of which it forms part. It could not address, however, the operation of procedural requirements and substantive standards of European Human Rights Law (as described in paragraphs 49-69).<sup>218</sup>

<sup>218</sup> See, for instance, *Al-Adsani v. the United Kingdom*, no. 35763/97, § 55, 21 November 2001.

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#### **B. Further considerations relevant to these proposals**

149. A new convention is not subject to the ECHR or ESC systems and would provide the opportunity for States to create an instrument that States would deem feasible. For States for which an Additional Protocol with Court jurisdiction is not politically viable, the Convention offers a strong alternative with an extensive range of negotiable options to determine an effective yet workable mechanism. A new convention could be opened for signature and ratification by Council of Europe member States, as well as non-Council of Europe member States. Thereby its standards could have influence beyond Europe.

150. In case of option (iii), if a compliance mechanism is included (which would arguably be important for the effective protection of human rights and the environment), member States would have to fund such a body and its activities. The establishment of a new convention with new institutions would require adequate resources. It would also entail questions of overlapping competences in relation to the ECHR and ESC systems which would have to be resolved. However, without a compliance mechanism, the new convention would be in addition to the many existing international instruments that lack the authoritative force of a binding control mechanism such as the Court, resulting in a loss of effectivity for the new convention. Finally, the process of adopting a convention, and its entry into force, can be lengthy.

#### **4. Standalone monitoring mechanism**

151. Another option that has been raised in the course of the working group's discussions is the creation of a standalone monitoring mechanism within the Council of Europe to deal with issues of human rights and the environment.



## A. Considerations related to the identified rationales

### a) Possible content

152. The mechanism could be a committee, similar to the European Commission against Racism and Intolerance (ECRI). But it could also take the form of an individual Commissioner with a mandate wider than just monitoring, similar to the Council of Europe's Commissioner for Human Rights, or indeed some other form.

153. Its tasks could be organised around three pillars: 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 and promoting examples of good practice. 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.

154. A new Council of Europe Commissioner on environment and human rights could also be established as an independent body elected by the Parliamentary Assembly, entrusted with the means and capacity to engage systematically in a permanent dialogue with member States, provide early warning and rapid reaction and offer relevant assistance, in close co-operation with key parts of the Council of Europe Secretariat and institutions.

### b) Covered rationales

155. A standalone monitoring mechanism would be relevant to a number of rationales. Through dialogue with national authorities and business, it could, to a certain extent, provide improved national protection of the right to a healthy environment and enhanced international responsibilities for businesses for the environmental impact of their activities. Through its thematic work it could indirectly encourage the development of further jurisprudence on environmental degradation and the triple planetary crisis. At the same time, the material content of the human right to a healthy environment is under development. A standalone monitoring mechanism that acts through dialogue and recommendations can better adapt to developments in international law, therefore, in a limited way, it may contribute to member States' understanding of the content of the right to a healthy environment.

156. However, while monitoring based on dialogue may encourage governments to take the necessary action to address the triple planetary crisis, it would not be able to provide accountability for human rights violations and ensure that rights' holders are not deprived of their fundamental rights due to environmental degradation and the triple planetary crisis.

- ✘ Establishing legal recognition of the right to a healthy environment in the Council of Europe framework
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- ✗ Addressing the operation of procedural requirements and the application of substantive standards in European Human Rights Law
- ✓ Enhancing the international responsibilities of businesses for the environmental impact of their activities
- ✗ Ensuring that rights' holders are not deprived of their fundamental human rights due to environmental degradation and the triple planetary crisis
- ✓ Enhancing protection for human rights defenders working on environmental matters
- ✓ Improving national protection of the right to a clean, healthy and sustainable environment
- ✗ Responding to the expectations of civil society
- ✓ Fulfilling the Council of Europe's mandate

#### **B. Further considerations relevant to this proposal**

157. Non-binding monitoring may be considered more easily introduced in an area where complex domestic policy choices need to be made, such as allocation of economic cost for reduction measures or the appropriate level of environmental protection. To that end, a standalone monitoring mechanism whose work is based on dialogue could provide technical advice and support to member States on cross-cutting issues such as human rights and the environment. Either type of mechanism (ECRI-type or Commissioner-type) would also enable dialogue and engagement to begin much more rapidly than would occur through negotiation of new legal instruments. It is important to note, however, that without an associated normative instrument, it may be uncertain which substantive standards would be monitored by the new body.

158. The new mechanism would also be in addition to the multiple existing international monitoring mechanisms based on State reporting or country visits. These mechanisms may also suffer from a relative lack of practical impact, as they might not attract enough public attention or resources compared to legally binding instruments.

159. Member States would have to fund this body and its activities. Furthermore, there is a risk that 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. It may also be recalled that there are already several UN and other special rapporteurs working on human rights issues relating to the environment or climate change, whose activities cover all Council of Europe member States.

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

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

## A. Considerations related to the identified rationales

### a) Possible content

161. The ECHR's preamble could underline the relationship between 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.

162. Preambles typically define the object and purpose of a treaty. They play an important role in treaty interpretation; the provisions of a preamble can be used to aid interpretation of the operative provisions, as stated in the Vienna Convention on the Law of Treaties (1969) (VCLT).<sup>219</sup>

### b) Covered rationales

163. Inclusion of environmental protection in the preamble of the ECHR would not be able to cover the rationales other than strengthening the development of the Court's jurisprudence on environmental matters.

164. While including environmental protection in the Court's preamble would provide additional legitimacy to its environmental jurisprudence and could encourage its further development in accordance with the existing procedural requirements and substantive standards, this option – even with an explanatory memorandum clarifying the aim of the addition – would leave States with no possibility to shape the way the Court will use the addition to the preamble, other than pleading in favour of certain interpretation as respondent or third party.

- ✘ Establishing legal recognition of the right to a healthy environment in the Council of Europe framework
- ✘ Shaping the content of the right to a healthy environment
- ✔ Encouraging the development of further jurisprudence on environmental degradation and the triple planetary crisis
- ✘ Addressing the operation of procedural requirements and the application of substantive standards in European Human Rights Law
- ✘ Enhancing the international responsibilities of businesses for the environmental impact of their activities
- ✘ Ensuring that rights' holders are not deprived of their fundamental human rights due to environmental degradation and the triple planetary crisis
- ✘ Enhancing protection for human rights defenders working on environmental matters
- ✘ Improving national protection of the right to a clean, healthy and sustainable environment

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<sup>219</sup> VCLT, Art. 31 (2).

- ✘ Responding to the expectations of civil society
- ✘ Fulfilling the Council of Europe's mandate

#### **B. Further considerations relevant to this proposal**

165. An Additional Protocol to the ECHR amending the existing preamble (similarly to Protocol No. 15) would be required that would have to be ratified by all member States to enter into force. Such a process is time and resource intensive at both Council of Europe and national levels.<sup>220</sup>

#### **6. Inclusion of environmental protection in the preamble of the ESC**

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

##### **A. Considerations related to the identified rationales**

###### **a) Possible content**

167. The Charter's preamble could underline the relationship between human rights and the environment, stress the importance of environmental protection, and thereby provide textual support for the ECSR's environmental jurisprudence.

168. Preambles typically define the object and purpose of a treaty. They play an important role in treaty interpretation; the provisions of a preamble can be used to aid interpretation of the operative provisions, as stated in the VCLT.<sup>221</sup>

###### **b) Covered rationales**

169. Inclusion of environmental protection in the preamble of the ESC could only address the rationales of potentially encouraging the development of the Committee's jurisprudence on environmental matters.

170. While including environmental protection in the Charter's preamble provides additional legitimacy to the Committee's environmental jurisprudence and interpretation, this option – even with an explanatory memorandum clarifying the aim of the amendment – would leave States with no possibility to shape the way the Committee will use the addition to the preamble.

- ✘ Establishing legal recognition of the right to a healthy environment in the Council of Europe framework
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- ✓ Encouraging the development of further jurisprudence on environmental degradation and the triple planetary crisis

<sup>220</sup> Adopted in 2013, Protocol No. 15 has been ratified by all the member States of the Council of Europe on 1 August 2021.

<sup>221</sup> VCLT, Art. 31 (2).

- × Addressing the operation of procedural requirements and the application of substantive standards in European Human Rights Law
- × Enhancing the international responsibilities of businesses for the environmental impact of their activities
- × Ensuring that rights' holders are not deprived of their fundamental human rights due to environmental degradation and the triple planetary crisis
- × Enhancing protection for human rights defenders working on environmental matters
- × Improving national protection of the right to a clean, healthy and sustainable environment
- × Responding to the expectations of civil society
- × Fulfilling the Council of Europe's mandate

#### **B. Further considerations relevant to this proposal**

171. Although the Charter is silent on the process of amending the preamble, general rules of treaty law suggest that an amending protocol would be required and that it would have to be ratified by all States Parties to enter into force.<sup>222</sup>

172. The process of adopting an amending protocol to the Charter would be time consuming and costly.

#### **7. Council of Europe non-binding instrument recognising the right to a healthy environment**

173. Another option that has been discussed in the working group is the negotiation and adoption of a non-binding Council of Europe instrument recognising the right to a healthy environment. The existing Recommendation CM/Rec(2022)20 on human rights and the environment does not recognise the right to a healthy environment. A new recommendation could either (i) follow the path of UNGA Res 76/300 and recognise the right or (ii) in addition to recognition, it could provide possible constituent elements of the right.

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<sup>222</sup> Article J "Amendments" of the Charter does not refer to the procedure of amending the Preamble specifically. Under Article J (4) of the Revised Charter: "Any amendment to Parts III to VI of this Charter shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it."

**A. Considerations related to the identified rationales**

**(i) Recognising the right to a healthy environment in general terms**

**a) Possible content**

174. A new Council of Europe recommendation would follow the path of UNGA Res 76/300 and recognise the right to a healthy environment without its possible constituent elements.

**b) Covered rationales**

175. As all Council of Europe member States voted in favour of UNGA Res 76/300, recreating the content of that resolution within the Council of Europe's framework would not result in any the fulfillment of any rationale other than establishing (non-binding) legal recognition of the right to a healthy environment in the Council of Europe framework. Given that all Council of Europe member States voted in favour of UNGA Res 76/300, the practical effects of such recognition are debatable; the instrument could appear as purely symbolic. At the same time, it could bring the Council of Europe's *acquis* in line with international law.

- ✗ Establishing legal recognition of the right to a healthy environment in the Council of Europe framework
- ✗ Shaping the content of the right to a healthy environment
- ✓ Encouraging the development of further jurisprudence on environmental degradation and the triple planetary crisis
- ✗ Addressing the operation of procedural requirements and the application of substantive standards in European Human Rights Law
- ✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities
- ✗ Ensuring that rights' holders are not deprived of their fundamental human rights due to environmental degradation and the triple planetary crisis
- ✓ Enhancing protection for human rights defenders working on environmental matters
- ✓ Improving national protection of the right to a clean, healthy and sustainable environment
- ✗ Responding to the expectations of civil society
- ✓ Fulfilling the Council of Europe's mandate

(i) **Recognising the right to a healthy environment and specifying its possible constituent elements**

a) **Possible content**

176. A new Council of Europe recommendation could also detail constituent elements of the right to a healthy environment. Moreover, it could serve as a catalyst for future binding codification work. Such an instrument could give States an opportunity to negotiate and determine a common understanding of the definition, scope and content of the right and subsequently harmonise their implementation of the right at national levels.

177. However, while a Council of Europe non-binding instrument recognising the right to a healthy environment would be in line with the organisation's mandate, would allow member States to actively shape the understanding of the right by defining its content in more detail, and could influence the development of the Court's and the ESCR's jurisprudence, it would not meet any other rationale.

- ✗ Establishing legal recognition of the right to a healthy environment in the Council of Europe framework
- ✓ Shaping the content of the right to a healthy environment
- ✓ Encouraging the development of further jurisprudence on environmental degradation and the triple planetary crisis
- ✗ Addressing the operation of procedural requirements and the application of substantive standards in European Human Rights Law
- ✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities
- ✗ Ensuring that rights' holders are not deprived of their fundamental human rights due to environmental degradation and the triple planetary crisis
- ✗ Enhancing protection for human rights defenders working on environmental matters
- ✗ Improving national protection of the right to a clean, healthy and sustainable environment
- ✗ Responding to the expectations of civil society
- ✓ Fulfilling the Council of Europe's mandate

**B. Further considerations relevant to this proposal**

178. Recommendations are not subject to ratification; they are adopted by consensus. The process of negotiating and adopting a recommendation is usually less labour and resource intensive than the adoption of binding instruments.

## 8. Combination of different instruments

179. Finally, the following combinations of instruments have been discussed: (i) additional protocols to both the ECHR and the ESC; (ii) a standalone convention on human rights and the environment plus inclusion of environmental protection in the preamble of the ECHR; (iii) additional protocol to the ECHR and/or the ESC combined with a commissioner type mechanism; and (iv) a standalone convention on human rights and the environment combined with a standalone monitoring mechanism; (v) as proposed in Parliamentary Assembly Recommendation 2211 (2021), additional Protocols to both the ECHR and the ESC, coupled with a “Five P’s Convention”, and the revision of Recommendation CM/Rec(2016)3 on human rights and business.

180. The overall benefit of these various options is that they combine the advantages of the respective instruments whilst potentially avoiding certain conceivably negative considerations. They would, however, pose other challenges due to the complexities involved in drafting, combining and adopting different instruments.

181. In exploring the combination of different instruments, a detailed breakdown of how each pairing responds to specific rationales will not be provided as it is assumed that a combination of instruments will address the combined rationales addressed by each instrument individually. Rather, an explanation of added benefits and particular challenges arising under each combination will be given.

(i) *Additional protocols to both the ECHR and the ESC*

### a) Possible content

182. The Charter and the Convention are two complementary and interdependent systems, each with its own specific features. Adopting additional protocols to both could protect the right to a healthy environment through systems that correspond to the suggested nature of the right as including both civil and political, and social and economic elements. The Convention would allow for enhanced protection for individual rights while the Charter, which optionally enables non-governmental organisations to lodge collective complaints on environmental issues, could allow for the protection of collective interests. This combined approach could require less change in the respective systems in order to achieve effective protection of the right to a healthy environment than would be the case under either system alone.

183. All of the proposals involving additional protocols to both instruments would codify the right to a healthy environment but could vary in the extent to which they include possible constituent elements of the right and/or additional elements relating to procedural requirements and the application of substantive standards (as referred to in paragraphs 49-69 above). Consequently, three options may be considered here as well: (i) codification of the right to a healthy environment in general terms without any additions; (ii) codification of the right to a healthy environment including its possible constituent elements; and (iii) codification of the right to a healthy environment including constituent elements and additional elements for increased effectiveness relating to the operation of procedural requirements and the application of substantive standards.



**b) Further considerations relevant to this proposal**

184. Including the right to a healthy environment in both instruments could generate an unprecedented substantive overlap in terms of the rights each instrument protects. This could result in a potential conflict between the standards of the ECHR and the ESC. This would especially be the case if the additional protocols would codify the right to a healthy environment in general terms, leaving the clarification on the constituent elements entirely to the respective monitoring bodies.

185. To address these concerns, careful consideration and clarity would be essential in the formulation of additional protocols. The time and resource implications of pursuing this option would also be significant, especially considering the potential challenges of harmonising the respective systems.

- (ii) *Standalone convention and inclusion of environmental protection in the preamble of the ECHR and/or the ESC*

186. This option would allow to retain the flexibility offered by a standalone Convention on human rights and the environment coupled with enhanced protection for human rights and the environment under the ECHR/ESC systems through the amendment to the respective preambles. It would draw on the strengths of both a specialised and general human rights framework.

**a) Possible content**

187. For the standalone convention, as referred to above, three options may be considered: (i) codification of the right to a healthy environment in general terms; (ii) codification of the right to a healthy environment including its possible constituent elements; and (iii) codification of the right to a healthy environment (including its constituent elements) coupled with additional elements as described above.

**b) Further considerations relevant to this proposal**

188. This approach would also be time and resource intensive. Furthermore, the practical challenge of establishing clear delineations between the two systems may impede on the effectiveness of this approach.

- (iii) *Additional protocol to the ECHR and/or the ESC combined with a standalone monitoring mechanism*

**a) Possible content**

189. This option would combine the aforementioned strengths of additional protocols to both the Convention and the Charter, coupled with a commissioner type mechanism which could further aid in the political process of the protection of the right to a healthy environment through the proposed activities laid out in paragraphs 149- 151 above. In terms of the combination of the ECHR and/or the ESC the considerations are the same as above.

**b) Further considerations relevant to this proposal**

190. This approach would also be time and cost sensitive due to the need to harmonise on various levels as explained above concerning the option to adopt additional protocols to both the ECHR and ESC.

- (iv) *Standalone convention on human rights and the environment combined with a commissioner type mechanism*

**a) Possible content**

191. This option would retain the flexibility offered by a standalone convention and would establish a standard against which a commissioner on human rights and the environment could function which could further aid in the political process of the protection of the right to a healthy environment through the proposed activities laid out in paragraphs 149-151 above.

**b) Further considerations relevant to this proposal**

192. This option would allow the most flexibility as the Convention and Charter systems would remain intact while retaining the possibility to create a new judicial enforcement mechanism under a standalone convention and strengthen the political framework.

- (v) *Parliamentary Assembly Recommendation 2211 (2021) – Additional Protocols to both the ECHR and the ESC coupled with a “Five P’s Convention” and the revision of Recommendation CM/Rec(2016)3 on human rights and business*

**a) Possible content**

193. In Recommendation 2211(2021), PACE, concerned by the speed and extent of environmental degradation that directly impacts human health, dignity and life and noting that harmful environmental impacts are increasingly affecting the enjoyment of first and second generation human rights by individuals and society at large, considered that the Council of Europe should show ambition and strategic vision for the future by facing up to this major transformative challenge for human rights and secure their enhanced protection in the era of systemic environmental threats to the present and future generations.

194. To that end, Recommendation 2211(2021) contains four proposals, namely: to simultaneously draw up (1) additional protocols to the Convention and (2) to the Charter, (3) to prepare a feasibility study for a “Five Ps” convention on environmental threats and technological hazards threatening human health, dignity and life to afford an opportunity to incorporate therein the principles of prevention, precaution and non-regression, and also potentially include a supranational monitoring mechanism modelled on independent expert committees<sup>223</sup>; and (4) 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.

<sup>223</sup> Resolution 2396 (2021) para 13 “By preventing and prosecuting violations of the right to a safe, clean, healthy and sustainable environment, and protecting the victims, the contracting States would adopt and implement state-wide integrated policies that are effective and offer a comprehensive response to environmental threats and technological hazards, involving parliaments in holding governments to account for the effective implementation of environment-friendly pro-human rights policies.”

**b) Further considerations relevant to this proposal**

195. The time and resource requirements of this proposal would be significant, especially since the complexities highlighted above (see paragraphs [x]-[x]) in relation to parallel systems would be even greater within an approach involving three treaties.

**IV. Key findings and final considerations**

196. The present report sets out the institutional and wider European and international background on the protection of human rights and the environment. It has identified a growing recognition of the interdependence of human rights and environmental protection in international law. This is shown by, amongst other things, the CDDH's Manual on human rights and the environment, which describes the relevant jurisprudence of the European Court of Human Rights and the European Committee on Social Rights within their respective competences, by the political recognition of the right to a healthy environment through UNGA Resolution 76/300 and by the fact that many member States within the Council of Europe recognise in a legally binding manner (some form of) the right to a healthy environment in their legal systems.

197. At the same time, while substantive and procedural elements of the right to a healthy environment have been identified in other regional legal systems and various international binding and non-binding instruments, there is no universally agreed definition of the right to a healthy environment and no universal understanding of its implications and content among Council of Europe member States.

198. Against this backdrop, it has been argued that a further instrument or instruments on environment and human rights is required. The present report has set out a number of recurring lines of arguments, so-called rationales, that have been brought forward in academic literature, among the experts heard by the working group and in statements by civil society to explain the need for a new instrument. It will be necessary to consider the extent to which each rationale is relevant before it will be possible to draw conclusions on whether there is a need for any new instrument or instruments.

199. To consider feasibility, the Report has examined different Council of Europe instruments that have been proposed to address a perceived need for a new instrument. The report has briefly examined their possible material content and has set out which of the rationales identified would be covered by the respective instrument. This allows to check which instruments address the rationale(s) that are considered relevant. The respective weight attached to the relevant rationales allows the narrowing down of options. Finally, the Report sets out key considerations for each of the instruments. The compilation of considerations aims to give an overview of the state of discussions and is intended to provide a meaningful basis for assessing the feasibility of each instrument.

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

**Overview of existing Council of Europe and, non-exhaustively, some of the other international instruments that address human rights and/or the environment.**

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
<b>Council of Europe</b>						
1950 Convention on Human Rights and Fundamental Freedoms (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. No <i>actio popularis</i> .	Binding	46
1961 European Social Charter (ETS No. 35) European Social Charter (revised) (ETS No. 163)	Binding	Articles 2,3,11 and 31 of the Charter have been relied upon complainants in cases brought relating to for environmental matters.	European Social Charter (revised) (ETS No. 163)	Collective complaints procedure lodged by the social partners (trade unions and employers'	Non-binding <sup>224</sup>	42 <i>16 States have accepted the collective complaints procedure</i>

<sup>224</sup> 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.

				organisations) and non-governmental organisations (INGOs and national NGOs in certain circumstances).		
1979 Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention, ETS No. 104),	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 file system; reporting system;	Non-binding	45
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) <sup>225</sup>	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	European Committee on Crime Problems, or an arbitral tribunal, or the International Court of Justice, as agreed upon	No complaints procedure	-	1 (never entered into force)

<sup>225</sup> 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 was not attained. 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. The PC-ENV held its first meeting on 3-4 April 2023.

		criminal offences which through environmental harm causes death or serious injury to any person or creates a significant risk of causing death or injury.	by the Parties concerned.			
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.	-	-	-	-
<b>United Nations</b>						
1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (2161 UNTS 447)	Binding	Procedural dimensions of the right to a healthy environment, including "access rights" to information, participation and justice. It also requires that people exercising these rights are not persecuted, penalised or harassed for doing so.	The Compliance Committee	Individual and collective mechanism allowing for members of the public including both NGOs and individuals to make communications.	Non-binding	41
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	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

Rights (993 UNTS)						
1989 Convention on the Rights of the Child (1577 UNTS)	Binding	The CRC does not explicitly recognise a human right to a healthy environment. However, the Committee has addressed the impact of environmental harm on a number of rights contained in the Convention. 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 Convention on the Rights of the Child	Committee on the Rights of the Child	Individual complaint procedure	Non-binding	46
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 was adopted under the UNFCCC. It 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 individual 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 establishment of a Consultative Committee of Experts to be chaired by the Secretary-General of the United Nations.	No complaints mechanism	-	27
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 (A/HRC/RES/52/23)	Non-binding	On the right to a clean, healthy and sustainable environment	-	-	-	-
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				
<b>Other international instruments applicable to Council of Europe member States</b>						
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

## APPENDIX III

## SUMMARY TABLE ON THE MATERIAL CONTENT OF THE RIGHT TO A HEALTHY ENVIRONMENT

Suggested elements of the RHE <sup>226</sup>	Instruments explicitly recognising the right to a healthy environment								
	American Convention and its Protocol <sup>227</sup>	African Charter <sup>229</sup> and its Protocol <sup>230</sup>	Revised Arab Charter on Human Rights	Escazu Agreement <sup>231</sup> and Aarhus Convention <sup>232</sup>	HRC Resolutions + HR Council	UN General assembly resolutions	Treaty bodies' instruments	Declarations	COP instruments
<i>in line with the UN SR' Framework Principles (FP) on Human Rights and the Environment</i>									
<b>FP 1:</b> Ensure a clean, healthy and sustainable	American Convention: art 26 <sup>233</sup>	African Charter: art 24 and 16 <sup>234</sup>	art 38	Escazu Agreement: art 4	Res 48/13: <sup>236</sup> art 1	Res 76/300: <sup>238</sup> recital	CRC/GC/26 <sup>239</sup> : art 4 <sup>240</sup>	Stockholm Declaration: <sup>242</sup> pp 1	Sharm el-Sheikh

<sup>226</sup> The following elements are not endorsed by the CDDH-ENV drafting group, they are based on binding and non-binding international instruments as footnoted.

<sup>227</sup> American Convention on Human Rights.

<sup>228</sup> The Working Group on the Protocol of San Salvador indicated that the right to a healthy environment, as established in this instrument, involved the following five State obligations: (a) guaranteeing everyone, without any discrimination, a healthy environment in which to live; (b) guaranteeing everyone, without any discrimination, basic public services; (c) promoting environmental protection; (d) promoting environmental conservation, and (e) promoting improvement of the environment; see OAS General Assembly, Resolution AG/RES. 2823 (XLIV-O/14) "Adoption of the monitoring mechanism for implementation of the Protocol of San Salvador," adopted on June 4, 2014, and GTPSS, "Progress Indicators: Second Group of Rights," November 5, 2013, OEA/Ser.L/XXV.2.1, GT/PSS/doc.9/13.

<sup>229</sup> African Charter on Human and Peoples' Rights.

<sup>230</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

<sup>231</sup> Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin American and the Caribbean.

<sup>232</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

<sup>233</sup> IACTHR, Advisory Opinion OC-23/17 of 15 November 2017, para 64. "(...) the full enjoyment of all human rights depends on a suitable environment".

IACTHR, *Case of the Indigenous Communities of the Lhaka Honhat Association v. Argentina*, judgment of 6 February 2020, para 245. "The right to food, and also the right to take part in cultural life and the right to water, are "particularly vulnerable" to "environmental impact".

<sup>234</sup> ACHPR, *The Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v. Nigeria*, 27 October 2001, para 51. "These rights recognise the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual".

<sup>236</sup> HRC, Resolution on the human right to a clean, healthy and sustainable environment, A/HRC/RES/48/13, 18 October 2021.

<sup>238</sup> UNGA, Resolution on the human right to a clean, healthy and sustainable environment, A/RES/76/300, 28 July 2022.

<sup>239</sup> CRC, General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, CRC/C/GC/26, 22 August 2023.

<sup>240</sup> Para 68. "States must ensure a clean, healthy and sustainable environment in order to respect, protect and fulfil children's rights". See also para 63 on the Right to a clean, healthy and sustainable environment: "This right is implicit in the Convention and directly linked to, in particular, the rights to life, survival and development, under Art 6, to the highest attainable standard of health, including taking into consideration the dangers and risks of environmental pollution, under Art 24, to an adequate standard of living, under Art 27, and to education, under Art 28, including the development of respect for the natural environment, under Art 29".

<sup>242</sup> United Nations Conference on the Human Environment, Declaration on the Human Environment (Stockholm Declaration), A/RES/2994(XXVII), 15 December 1972.

environment in order to respect, protect and fulfil human rights	Protocol of San Salvador: art 11	art 24 <sup>235</sup>		Aarhus Convention: recital	Res 52/23: <sup>237</sup> recital		CEDAW/GC/39 <sup>241</sup> : art 3,5,13,14	Political declaration of the UN Environment Assembly <sup>243</sup> : recital ASEAN Human Rights Declaration: art 28 f	Implementation Plan: <sup>244</sup> recital
<b>FP 2:</b> Respect, protect and fulfil human rights in order to ensure a healthy environment	American Convention: art 26 with art 1 (1) <sup>245</sup> Protocol of San Salvador: art 11	African Charter: art 24 and 16 <sup>246</sup>	art 38	Aarhus Convention: art 1	Res 48/13: art 2 Res 52/23: recital	Res 76/300: art 2	CRC/GC/26: art 24 <sup>247</sup>	ASEAN Human Rights Declaration: art 35	
<b>FP 3:</b> Non-discrimination in	American Convention: art 26 <sup>248</sup>				Res 39/12: art 18 Res 52/23:		CRC/GC/26: art 2 <sup>249</sup>	Stockholm Declaration: pp 1	

<sup>235</sup> ACHtHR, *Ligue Ivoirienne des Droits de l'homme (LIDHO) and others v. Republic of Côte d'Ivoire*, 5 September 2023, para. 185. "In these circumstances, it cannot be said that the Respondent State complied with its obligation to protect and implement the right to a generally satisfactory environment favourable to development".

<sup>237</sup> HRC Resolution on the human right to a clean, healthy and sustainable environment, A/A/RES/RES/52/23, 4 April 2023.

<sup>241</sup> CEDAW, General recommendation No. 39 (2022) on the rights of Indigenous women and girls, CEDAW/C/GC/39, 31 October 2022.

<sup>243</sup> Political declaration of the special session of the United Nations Environment Assembly to commemorate the fiftieth anniversary of the establishment of the United Nations Environment Programme, UNEP/EA.SS.1/4, 3 March 2022.

<sup>244</sup> Adopted by consensus at the 27th Conference of the Parties to the UN Framework Convention on Climate Change (COP-27).

<sup>245</sup> IACtHR, *Case of the Indigenous Communities of the Lhaka Honhat Association v. Argentina*, judgment of 6 February 2020, para 207. "Regarding the right to a healthy environment, for the purposes of this case it should be pointed out States not only have the obligation to respect this, but also the obligation established in Art 1(1) of the Convention to ensure it, and one of the ways of complying with this is by preventing violations". See also IACtHR, Advisory Opinion OC-23/17 of 15 November 2017, para 64. "Some human rights are more susceptible than others to certain types of environmental damage (...): the rights whose enjoyment is particularly vulnerable to environmental degradation, also identified as substantive rights (...), and rights whose exercise supports better environmental policymaking, also identified as procedural rights".

<sup>246</sup> ACHPR, *The Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v. Nigeria*, 27 October 2001, para 55. "The right to enjoy the best attainable state of physical and mental health enunciated in Art 16(1) of the African Charter and the right to a general satisfactory environment favourable to development (Art 16(3)) (...) obligate governments to desist from directly threatening the health and environment of their citizens".

<sup>247</sup> Para 37. "The right to health includes the enjoyment of a variety of facilities, goods, services and conditions that are necessary for the realization of the highest attainable standard of health, including a healthy environment".

<sup>248</sup> IACtHR, Advisory Opinion OC-23/17 of 15 November 2017, para 67. "It has been recognized that environmental damage "will be experienced with greater force in the sectors of the population that are already in a vulnerable situation"; hence, based on "international human rights law, States are legally obliged to confront these vulnerabilities based on the principle of equality and non-discrimination".

<sup>249</sup> Para 14. "States have an obligation to effectively prevent, protect against and provide remedies for both direct and indirect environmental discrimination".

relation to enjoyment of a healthy environment	Protocol of San Salvador: art 11				art 4(d)		CEDAW/GC/3: art 1,2		
<b>FP 4:</b> Protection of individuals, groups and organs of society that work on human rights or environmental issues	American Convention: art 16 with art 1(1) <sup>250</sup>			Escazu Agreement: art 4.6 and 9 Aarhus Convention: art 3.4	Res 52/23: art 4(e)		CRC/GC/26: art 13 and 15 <sup>251</sup>		Kunming-Montreal Global Biodiversity Framework <sup>252</sup> Target 22
<b>FP 5:</b> Respect and protect the rights to freedom of expression, association, and peaceful assembly in relation to environmental matters	American Convention: art 16 with art 1(1) <sup>253</sup>			Escazu Agreement: art 9.2	Res 52/23: art 4(c)		CRC/GC/26: art 13 and 15 <sup>254</sup>		
<b>FP 6:</b> Provide for environmental education and public awareness on environmental matters		Maputo Protocol: art 18		Escazu Agreement: art 10 Aarhus Convention: art 3.3	Res 39/12 <sup>255</sup> : art 14.4(e) Res 52/23: art 4(c)		CRC/GC/26: art 28 and 29 <sup>256</sup>	Stockholm Declaration: pp 19 Political declaration of the UN Environment Assembly: art 14	
<b>FP 7:</b> Provide public access to		African Charter:		Escazu Agreement:	Res 52/23: art 4(b)		CRC/GC/26: art 13 and 17 <sup>258</sup>	Political declaration f	

<sup>250</sup> IACtHR, *Kawas-Fernández v. Honduras*, 3 April 2009, para. 146, 149 and 213. "The State has a duty to adopt legislative, administrative and judicial measures, or to fulfill those already in place, guaranteeing the free performance of environmental advocacy activities; the instant protection of environmental activists facing danger or threats as a result of their work; and the instant, responsible and effective investigation of any acts endangering the life or integrity of environmentalists on account of their work".

<sup>251</sup> Para 30. "States should adopt and implement laws to protect child human rights defenders in accordance with international human rights standards".

<sup>252</sup> Adopted at the 15th Conference of the Parties to the CBD (COP-15). See Annex, section C.7(g) "The Framework acknowledges the human right to a clean, healthy and sustainable environment".

<sup>253</sup> IACtHR, *Kawas-Fernández v. Honduras*, 3 April 2009, see fn 207 (above).

<sup>254</sup> Para 30. "States must take all appropriate measures to ensure that no restrictions other than those that are provided by law and that are necessary are imposed on forming and joining associations or taking part in environmental protests".

<sup>255</sup> United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, A/HRC/RES/39/12, 28 September 2018.

<sup>256</sup> Para 52. "Every child has the right to receive an education that reflects environmental values".

<sup>258</sup> Para 34. "States have an obligation to make environmental information available".

environmental information		art 24 & 16 <sup>257</sup>		art 1 and 5 Aarhus Convention: art 4 and 5				the UN Environment Assembly: art 14	
<b>FP 8:</b> Environmental impact assessments of proposed projects and policies, including their potential effects on the enjoyment of human rights	American Convention: art 26 with Art 1(1) <sup>259</sup>	African Charter: art 24 & 16 <sup>260</sup>		Escazu Agreement: art 6.3(h)  Aarhus Convention: art 5.6	Res 39/12: art 5.2(a)		CRC/GC/26: art 4 <sup>261</sup>	Political declaration of the UN Environment Assembly: art 14	
<b>FP 9:</b> Provide for and facilitate public participation in decision-making related to the environment		African Charter: art 24 & 16 <sup>262</sup>  Maputo Protocol: art 18		Escazu Agreement: art 1 and 7  Aarhus Convention: art 6,7,8	Res 39/12: art 10  Res 52/23: art 4(c)(b)	Res 61/295: <sup>263</sup> annex, art 32	CRC/GC/26: art 12 <sup>264</sup>  CEDAW/GC/3: art 12,14		
<b>FP 10:</b> Provide for access to effective remedies for violations of human rights and domestic laws relating to the environment				Escazu Agreement: art 8  Aarhus Convention: art 9	Res 52/23: art 4(e)		CRC/GC/26: art 4 <sup>265</sup>  CEDAW/GC/3: art 12,14	Stockholm Declaration: pp 22 Political declaration of the UN	

<sup>257</sup> ACHPR, *The Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights v. Nigeria (CESR)*, 27 October 2001, para 53. "Government compliance with the spirit of Arts 16 and 24 of the African Charter must also include (...) providing information to those communities exposed to hazardous materials and activities".

<sup>259</sup> IACtHR, *Case of the Indigenous Communities of the Lhaka Honhat Association v. Argentina*, 6 February 2020, para 208. "The following are some measures that must be taken in relation to activities that could potentially cause harm: (...) require and approve environmental impact assessments".

<sup>260</sup> ACHPR, *The Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights v. Nigeria (CESR)*, 27 October 2001, para 53. "Government compliance with the spirit of Arts 16 and 24 of the African Charter must also include ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development".

<sup>261</sup> Para. 68. "States have a due diligence obligation to take appropriate preventive measures to protect children against reasonably foreseeable environmental harm and violations of their rights, paying due regard to the precautionary principle. This includes assessing the environmental impacts of policies and projects".

<sup>262</sup> ACHPR, *The Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v. Nigeria*, 27 October 2001, para 53. "Government compliance with the spirit of Arts 16 and 24 of the African Charter must also include (...) providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities".

<sup>263</sup> United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, 13 September 2007.

<sup>264</sup> Para 27. "States must ensure that age-appropriate, safe and accessible mechanisms are in place for children's views to be heard regularly and at all stages of environmental decision-making processes for legislation, policies, regulations, projects and activities that may affect them, at the local, national and international levels".

<sup>265</sup> Para 84. "States should provide access to justice pathways for children (...) for violations of their rights relating to environmental harm".

								Environment Assembly: art 14	
<b>FP 11:</b> The maintenance of non-retrogressive substantive environmental measures in relation to the progressive realization of economic, social, and cultural rights	American Convention: art 26 <sup>266</sup>			Escazu Agreement: art 3(c)			CRC/GC/26: art 4 <sup>267</sup> (all rights)		
<b>FP 12:</b> Effective enforcement of compliance with the standards by private actors as well as governmental authorities	American Convention: art 26 with 1(1) <sup>268</sup>	African Charter: art 24 <sup>269</sup>		Escazu Agreement: art 5.18	Res 39/12: art 18.5  Res 52/23: art 4(g)		CRC/GC/26: art 4 <sup>270</sup>		
<b>FP 13:</b> International cooperation with respect to global or transboundary environmental harm				Escazu Agreement: art 11	Res 48/13: art 3  Res 39/12: art 18.4	Res 76/300: art 3 and 4	CRC/GC/26: art 24 <sup>271</sup> and 4 <sup>272</sup>	Stockholm Declaration: pp 24  Political declaration of	

<sup>266</sup> IACHR, *Caso No. 12.718: Comunidad de La Oroya v. Perú*, 19 November 2021, para. 186-188. "Once these standards are in place, the principle of non-regression means the State cannot ignore them or establish levels that are less protective without adequate justification, which would compromise its obligation to ensure the progressive development of the rights to health and the environment".

<sup>267</sup> Para 71. "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, (...) by refraining from taking retrogressive measures that are less protective of children".

<sup>268</sup> IACHR, *Caso No. 12.718: Comunidad de La Oroya v. Perú*, 19 November 2021, para. 169. States should enact legislation requiring businesses that generate pollution or use toxic substances to conduct human rights due diligence.

<sup>269</sup> ACHHR, *Ligue Ivoirienne des Droits de l'homme (LIDHO) and others v. Republic of Côte d'Ivoire*, 5 September 2023, para. 184. "The failure of the entities which were charged with the dumping and treatment of the waste does not exonerate the Respondent State of its responsibility to guarantee and protect the environment".

<sup>270</sup> Para 78. "Businesses have the responsibility to respect children's rights in relation to the environment. States have the obligation to protect against the abuse of child rights by third parties, including business enterprises".

<sup>271</sup> Para 42. "States should integrate measures to address environmental health concerns relevant to children. (...) The obligations of States under Art 24 of the Convention also apply when developing and implementing environmental agreements to address transboundary and global threats to children's health".

<sup>272</sup> Para 91. "Climate change, pollution and biodiversity loss clearly represent urgent examples of global threats to children's rights that require States to work together, calling for the widest possible cooperation by all countries and their participation in an effective and appropriate international response".



that adversely affects human rights					Res 52/23: art 5(c)			the UN Environment Assembly: art 1	
<b>FP 14:</b> The protection of the rights of those who are particularly vulnerable to environmental harm, including women and children	Protocol of San Salvador: art 11	Maputo Protocol: art 18 and 24		Escazu Agreement: art 8.5	Res 52/23: art 4(i)		CRC/GC/26: art 2 <sup>273</sup>		Kunming-Montreal Global Biodiversity Framework: Target 22
<b>FP 15:</b> Compliance with obligations to indigenous people and members of traditional communities	American Convention: art 26 <sup>274</sup> , art 21, 23 with 1(1) and 2 <sup>275</sup>	African Charter: art 14 <sup>276</sup> art 22 <sup>277</sup>  Maputo Protocol: art 18		Escazu Agreement: art 7.15		Res 61/295: annex, art 29	CRC/GC/26: art 30 <sup>278</sup>  CEDAW/GC/3: art 12,14		Kunming-Montreal Global Biodiversity Framework: Target 22
<b>FP 16:</b> States should respect, protect and fulfil human rights in the actions they take to address environmental challenges and pursue		African Charter:  art 39		Escazu Agreement: art 1	Res 48/13: art 4.(c)  Res 52/23: art 4(a)		CRC/GC/26: art 4 <sup>281</sup>		Kunming-Montreal Global Biodiversity Framework:

<sup>273</sup> Para 15. "States should collect disaggregated data to identify the differential effects of environment-related harm on children and to better understand intersectionalities, paying special attention to groups of children who are most at risk, and to implement special measures and policies, as required".

<sup>274</sup> IACtHR, *Case of the Indigenous Communities of the Lhaka Honhat Association v. Argentina*, 6 February 2020, para 250. "The management by the indigenous communities of the resources that exist in their territories should be understood in pragmatic terms, favorable to environmental preservation".

<sup>275</sup> IACtHR, *Kaliña and Lokono Peoples v. Suriname*, 25 November 2015, para. 181. "States must ensure the effective participation of indigenous peoples in the creation of protected areas, their continued access to and use of traditional territories, including those within the protected areas (for hunting, fishing, gathering, cultivation and cultural activities consistent with sustainable use) and a fair share of the benefits arising from conservation initiatives".

<sup>276</sup> ACtHPR, *African Commission on Human and People's Rights v Republic of Kenya*, Judgment, 26 May 2017, para. 130. "The Court is of the view that the continued denial of access to and eviction from the Mau Forest of the Ogiek population cannot be necessary or proportionate to achieve the purported justification of preserving the natural ecosystem of the Mau Forest".

<sup>277</sup> ACHPR, *Centre for Minority Rights development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, 4 February 2010, para. 293 cites the U.N. Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: "The principal human rights effects of these projects for indigenous peoples relate to loss of traditional territories and land, eviction, migration and eventual resettlement, depletion of resources necessary for physical and cultural survival, destruction and pollution of the traditional environment (...)".

<sup>278</sup> Para 58. "States should closely consider the impact of environmental harm, such as deforestation, on traditional land and culture and the quality of the natural environment, while ensuring the rights to life, survival and development of Indigenous children".

<sup>281</sup> Para 68. "States must take urgent steps to fulfil their obligation to facilitate, promote and provide for the enjoyment by children of their rights, including their right to a clean, healthy and sustainable environment, such as by transitioning to clean energy and adopting strategies and programmes to ensure the sustainable use of water resources".

sustainable development		art 24 <sup>279</sup> art 16 <sup>280</sup>		Aarhus Convention: recital					Section C.7(g)
Obligation to prevent environmental harm	American Convention: art 26 with art 1(1) <sup>282</sup>	African Charter: art 24 <sup>283</sup> art 16 <sup>284</sup>		Escazu Agreement: art 8.3(d)	Res 39/12: art 14.4(d)  Res 52/23: art 4(g)		CRC/GC/26: art 4 <sup>285</sup>	Stockholm Declaration: pp 7	

<sup>279</sup> ACHPR, *The Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v. Nigeria*, 27 October 2001, para 52." It requires the State to take reasonable and other measures (...) to promote conservation, and to secure an ecologically sustainable development and use of natural resources".

ACHtHR, *Ligue Ivoirienne des Droits de l'homme (LIDHO) and others v. Republic of Côte d'Ivoire*, 5 September 2023, para. 184. "The Respondent State authorities failed to take appropriate legal, administrative and other measures to prohibit the importation of dangerous wastes on its territory as prescribed by the Bamako Convention. It further finds that these authorities had the obligation to ensure that the dumping of this cargo on the territory of the Respondent State was conducted with a view to protecting the environment from the harmful effects which could result".

<sup>280</sup> ACHtHR, *Ligue Ivoirienne des Droits de l'homme (LIDHO) and others v. Republic of Côte d'Ivoire*, 5 September 2023, para. 174. "Court finds, therefore, that the Respondent State violated the right to health protected by Art 16 of the Charter, (...), by failing to take all the necessary measures to ensure that persons affected by the disaster had full access to quality health care".

<sup>282</sup> IACtHR, *Case of the Indigenous Communities of the Lhaka Honhat Association v. Argentina*, 6 February 2020, para 208. "The principle of prevention of environmental harm forms part of customary international law and entails the State obligation to implement the necessary measures *ex ante* damage is caused to the environment (...) This obligation must be fulfilled in keeping with the standard of due diligence, which must be appropriate and proportionate to the level of risk of environmental harm"; IACHR, *Caso No. 12.718: Comunidad de La Oroya v. Perú*, 19 November 2021, para. 169. The Inter-American Commission on Human Rights has found that for States to fulfil the right to a non-toxic environment, compliance with the duty of prevention is closely linked to the existence of a robust regulatory framework and a coherent system of supervision and oversight.

<sup>283</sup> ACHPR, *The Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v. Nigeria*, 27 October 2001, para 52." It requires the State to take reasonable and other measures to prevent pollution and ecological degradation".

ACHtHR, *Ligue Ivoirienne des Droits de l'homme (LIDHO) and others v. Republic of Côte d'Ivoire*, 5 September 2023, para 183. "State had a duty to act (...) to prevent the dumping of the waste".

<sup>284</sup> ACHtHR, *Ligue Ivoirienne des Droits de l'homme (LIDHO) and others v. Republic of Côte d'Ivoire*, 5 September 2023, para 174. "The Court finds, therefore, that the Respondent State violated the right to health protected by Art 16 of the Charter, firstly by failing to prevent the dumping of the toxic waste."

<sup>285</sup> Para. 68. "States have a due diligence obligation to take appropriate preventive measures to protect children against reasonably foreseeable environmental harm and violations of their rights, paying due regard to the precautionary principle. This includes identifying and preventing foreseeable harm".

## APPENDIX IV



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 Rights<sup>1</sup> and the Vienna Declaration and Programme of Action,<sup>2</sup> recalling the Declaration on the Right to Development,<sup>3</sup> the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration),<sup>4</sup> the Rio Declaration on Environment and Development,<sup>5</sup> 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,*

<sup>1</sup> Resolution 217 A (III).

<sup>2</sup> A/CONF.157/24 (Part I), chap. III

<sup>3</sup> Resolution 41/128, annex.

<sup>4</sup> *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.

<sup>5</sup> *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",<sup>6</sup> 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",<sup>7</sup>

*Recalling further* all Human Rights Council resolutions on human rights and the environment, including resolutions [44/7](#) of 16 July 2020,<sup>8</sup> [45/17](#) of 6 October 2020,<sup>9</sup> [45/30](#) of 7 October 2020<sup>10</sup> and [46/7](#) of 23 March 2021,<sup>11</sup> 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,

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<sup>6</sup> Resolution 66/288, annex.

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

<sup>8</sup> *Ibid.*, *Seventy-fifth Session, Supplement No. 53 (A/75/53)*, chap. V, sect. A.

<sup>9</sup> *Ibid.*, *Supplement No. 53A (A/75/53/Add.1)*, chap. III.

<sup>10</sup> *Ibid.*

<sup>11</sup> *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,<sup>12</sup>

*Recalling* the Guiding Principles on Business and Human Rights,<sup>13</sup> 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,<sup>14</sup>

*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

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<sup>12</sup> A/HRC/37/59, annex

<sup>13</sup> A/HRC/17/31, annex

<sup>14</sup> 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.