

CDDH-ENV(2021)04rev1

14/06/2021

## **STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)**

---

### **Environmental Protection and Human Rights**

*Legal survey on existing principles and standards to be used as a background document  
by the Drafting Group on Human Rights and Environment (CDDH-ENV)*

Prepared by Juliëtte RIERINK (LL.M.), Human Rights Research Consultant

#### Executive summary

This document, prepared in view of the first CDDH-ENV meeting (28-30 April 2021), sets out the background for the work to be carried out by the Drafting Group (Section I). It describes the scope of environmental protection and its interconnectedness with human rights, as well as other specific characteristics to be considered when developing further work in this field (Section II).

In addition, the document contains an analysis of the existing principles and legal standards at international and regional levels (Section III). Examples of national approaches and good practices have also been included as they may serve as inspiration for other Council of Europe member States and beyond (Section IV).

The document finally recalls some of the ideas which emerged during at the High-Level Conference on “Environmental Protection and Human Rights”, held in February 2020 under the aegis of the Georgian Presidency of the Committee of Ministers, which may provide food for thought in view of possible additional work to be carried out by the Council of Europe in this area (Section IV).

## TABLE OF CONTENTS

I.	FOREWORD.....	4
II.	INTRODUCTION.....	7
	A. Environmental crisis .....	7
	B. Scope and definitions .....	7
	C. Specific characteristics.....	9
	Interconnection between the protection of the environment and human rights .....	9
	Direct and indirect consequences .....	12
	Effects on vulnerable and marginalized groups .....	13
	Gender dimension.....	15
	Transboundary context .....	16
	Impact on future generations .....	17
	D. Short chapter recap.....	18
III.	APPLICABLE LEGAL STANDARDS AND PRINCIPLES.....	19
	A. Council of Europe.....	19
	Specific instruments on the environment with a human rights dimension .....	19
	General human rights instruments with an environmental dimension .....	22
	Parliamentary Assembly .....	25
	The Council of Europe Commissioner for Human Rights .....	30
	B. United Nations.....	31
	Specific instruments on the environment with a human rights dimension .....	31
	General human rights instruments with an environmental dimension .....	37
	C. European Union .....	41
	D. Short chapter recap.....	42
IV.	APPROACHES AND GOOD AND PROMISING PRACTICES OF MEMBER STATES	
	44	
	A. Constitutional protection of the environment .....	44
	B. Cases before national courts.....	45
	The Urgenda Climate Case – Dutch Supreme Court .....	46

Swiss Senior Women for Climate Protection Case – Swiss Supreme Court.....	47
Climate Case Ireland – Irish Supreme Court.....	49
Arctic oil drilling Case – Norwegian Supreme Court.....	50
L’Affaire du Siècle – Parisian Administrative Court .....	51
Portuguese Youth Activists – European Court of Human Rights .....	52
C. <i>Actio popularis</i> and broad <i>locus standi</i> in environmental cases .....	54
D. Environmental impact assessments (EIAs).....	54
E. Environmental education and awareness.....	55
F. Protection of environmental human rights defenders .....	56
G. Short chapter recap .....	57
V. CONCLUSIONS AND POSSIBLE FOLLOW-UP .....	58
A. Updating the Manual .....	58
B. Preparing a non-binding instrument .....	58
C. Council of Europe and environmental human rights.....	59
D. Possible further work based on the outcomes of and suggestions made at the High-Level Conference.....	60
The need for a new binding instrument on human rights and the environment.....	60
Option of enhancing the implementation of existing standards .....	70
E. Short chapter recap.....	72
APPENDIX 1: Selection of proposed international principles on human rights and environmental protection .....	74
APPENDIX 2: Extracts from regional human rights instruments .....	84
APPENDIX 3: Protection of the environment at constitutional level .....	86

## I. FOREWORD

1. At its 1361<sup>st</sup> meeting (19-21 November 2019), the Committee of Ministers adopted terms of reference for the Steering Committee for Human Rights (CDDH) for the period 2020-21.<sup>1</sup> As main tasks the CDDH was instructed to:

*(i) Work on the protection, development and promotion of human rights in Europe to:*

*(a) Contribute to enhancing the protection of human rights by improving the effectiveness of the European Convention on Human Rights' control mechanism and the implementation of the Convention at national and European levels, this work being a permanent priority for the CDDH.*

*(b) Provide effective responses at the normative and general policy levels to the challenges posed to human rights in European societies.*

[...]

*(iv) Contributes to the achievement of the UN 2030 Agenda for Sustainable Development, in particular with regard to Goal 3: Good health and well-being and Goal 16: Peace, Justice and Strong institutions.*

2. The specific tasks of the CDDH include, inter alia:

*(v) On the basis of developments in the member States, within the Council of Europe and in other fora, update the **Handbook [Manual] on Human Rights and the Environment** and, if appropriate, develop a **draft non-binding instrument of the Committee of Ministers (e.g. recommendation, guidelines)** recalling existing standards in this field.*

3. Subsequently, at its 92<sup>nd</sup> meeting (27-30 November 2019), the CDDH exchanged views on the "preparation of the CDDH 2020-2021 biennium work" and agreed to set up a Drafting Group on Human Rights and Environment (CDDH-ENV), and elected Ms. Kristīne LĪCIS (Latvia) Chair of the Group.

4. The Chair participated in the High-Level Conference on "Environmental Protection and Human Rights" which was organised on 27 February 2020 in Strasbourg under the aegis of the Georgian Presidency of the Committee of Ministers. At the end of the event, the Georgian Ministers, Mr. David ZALKALIABNI, presented a Declaration drawing up the

---

<sup>1</sup> Terms of reference of the CDDH, DH-SYSC and DH-BIO for 2020 – 2021, as adopted by the Committee of Ministers at its 1361<sup>st</sup> meeting, 19-21 November 2019 <https://rm.coe.int/mandat-2020-2021-en/1680994838>

conclusions of the Conference.<sup>2</sup> In the Declaration it is proposed to launch a Council of Europe Strategy on the Environment and Human Rights with the aim of supporting member States in meeting their obligations in the field, including in respect of the United Nations Convention on Climate Change.

5. At the Committee of Ministers' 1375bis meeting (15 May 2020) in connection with the transfer of the Chairmanship of the Committee of Ministers, the outgoing (Georgia) and incoming (Greece and Germany) presidencies presented a Joint Declaration on Human Rights and the Environment<sup>3</sup> which further clarifies the Council of Europe's work in this area:

[...]

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

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

6. At its 93<sup>rd</sup> meeting (14-16 December 2020) the CDDH adopted the following the terms of reference for the work of the CDDH-ENV:

*On the basis of developments in member States, within the Council of Europe and in other fora, and in the light, in particular, of the Joint Declaration on Human Rights and the Environment of the outgoing and incoming Chairmanships of the Committee of Ministers (15 May 2020), the CDDH-ENV is instructed to:*

- (i) *Update the Manual on Human Rights and the Environment (deadline: 31 March 2021);*
- (ii) *in the light of the draft updated Manual, prepare a draft non-binding legal instrument on human rights and the environment (deadline: 31 October 2021);*

---

<sup>2</sup> Final Declaration by the Georgian Presidency of the Committee of Ministers, Environmental Protection and Human Rights, High-Level Conference organised under the aegis of the Georgian Presidency of the Committee of Ministers (Strasbourg, 27 February 2020), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 6 April 2021

<sup>3</sup> Joint Declaration on human rights and the environment by the outgoing and incoming Presidencies of the Committee of Ministers, Decl(15/05/2020), [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016809e59f9](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809e59f9)

- (iii) *Consider the need for further work in this field, bearing in mind the obligations of the member States under the European Convention on Human Rights and the steady development of the case-law by the European Court of Human Rights and national courts that foster the interconnection between the protection of the environment and human rights.*

## II. INTRODUCTION

### A. Environmental crisis

7. ‘Environmental crisis’ is an overarching term used to describe the multitude of environmental issues and crises the world is facing today.<sup>4</sup> The environmental crisis stems from human-induced damages, and includes, in the broadest sense, “climate change, deforestation, desertification, loss of biodiversity, scarcity of natural resources, pollution, and the consequent natural and the associated environmental impacts.”<sup>5</sup> Although indeed not the only one, it is especially the climate crisis that is pressing, the increasing temperatures further fuel “environmental degradation, natural disasters, weather extremes, food and water insecurity, economic disruption, conflict, and terrorism.”<sup>6</sup>

### B. Scope and definitions

8. The term ‘natural environment’ (hereafter: ‘environment’) covers a wide range of natural resources, including living and non-living organisms “such as air, water, land, flora and fauna and the interaction between the same factors.”<sup>7</sup> For example, the OECD defines the environment as “the totality of all the external conditions affecting the life, development and survival of an organism.”<sup>8</sup> It encompasses “the naturally produced physical surroundings on which humanity is entirely dependent in all its activities. The various uses to which these surroundings are put for economic ends are called environmental functions.”<sup>9</sup> It thus includes the natural wealth of the earth as a whole and the space humans live in, share collectively and are fully dependent on. Unsurprisingly, the continued degradation of the environment therefore results in the degradation of human life and human rights altogether.<sup>10</sup>

---

<sup>4</sup> ‘Environmental crisis’ (Oxford Reference, 2007) <<https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095753543?rskey=YI66XV&result=1>> accessed at 29 September 2020.

<sup>5</sup> UN Environmental Programme, *Global Environment Outlook GEO-6: Healthy Planet, Healthy People* (Cambridge University Press, 2019), p. 4, e-Book available at: <<https://www.unenvironment.org/resources/global-environment-outlook-6#:~:text=GEO%2D6%20builds%20on%20the,analyses%20the%20effectiveness%20of%20policies.>>; UN General Assembly, ‘Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’ (15 July 2020), UN Doc. A/75/161, para. 13.

<sup>6</sup> United Nations, ‘The Climate Crisis – A Race We Can Win’ <<https://www.un.org/en/un75/climate-crisis-race-we-can-win>> accessed at 29 September 2020.

<sup>7</sup> *Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment* (21 June 1993), ETS No. 150, Art. 2(10).

<sup>8</sup> ‘Environment’ (OECD) (last updated: 5 July 2005) <<https://stats.oecd.org/glossary/detail.asp?ID=813>> accessed at 20 December 2020.

<sup>9</sup> *Ibid.*

<sup>10</sup> UN General Assembly, ‘Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’ (15 July 2020), UN Doc. A/75/161, paras. 3, 14.

9. The United Nations ('UN') has *inter alia* focused on the socio-economic aspect of the environment. Due to the poverty in some parts of the world, people are forced to overuse the same environmental resource to survive, which further impoverishes the environment and consequently further impoverishes them.<sup>11</sup> In other parts of the world however, the taking and overconsuming of natural resources occurs at a rate which leaves little for future generations.<sup>12</sup> The overall increasing growth of the world's population and urbanization only adds to this. To mitigate this, the UN focuses on sustainable development: "[the] need to reconcile economic development with protection of the environment."<sup>13</sup> This is an approach found in, *inter alia*, the Stockholm Declaration,<sup>14</sup> the World Summit Outcome<sup>15</sup> and the Sustainable Development Goals.<sup>16</sup>

10. At present, there is no universally recognised definition of the 'environment' in the human rights context, as there is an absence of the protection of the environment as a substantive right at the international level. In the discussion of the recognition of such a right at international, regional and national level, it is often qualified with a number of variations such as balanced, benevolent, clean, favourable, healthy, safe, sound, sustainable, viable and well preserved, which is broader than merely the right to a 'healthy environment' (see below Section III, Section VI, and Appendices 1, 2 and 3).<sup>17</sup>

11. However, 'climate change' has been defined in the context of the United Nations Framework Convention on Climate Change (UNFCCC) as "a change in climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable periods of time."<sup>18</sup>

12. Within the framework of the Council of Europe, the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment includes a definition of the

---

<sup>11</sup> United Nations, 'Report of the World Commission on Environment and Development: Our Common Future' (Brundtland Report) (1987), p. 28, para. 3, download available at: <<http://www.environmentandsociety.org/mml/un-world-commission-environment-and-development-ed-report-world-commission-environment-and>>

<sup>12</sup> *Ibid.*, p. 28, para. 1

<sup>13</sup> *GabCikovo-Nagymaros Project (Hungary v. Slovakia)* (Judgment), ICJ Rep. 1997, para. 140

<sup>14</sup> Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) (16 June 1972), para. 2

<sup>15</sup> UN General Assembly, 'World Summit Outcome' (2005), UN Doc. A/RES/60/1, para. 48, 49

<sup>16</sup> UN General Assembly, 'Transforming our world: the 2030 Agenda for Sustainable Development' (25 September 2015), UN Doc. A/RES/70/1, p. 2

<sup>17</sup> E. Lambert, 'The Environment and Human Rights' (27 February 2020), Introductory Report to the High-Level Conference Environmental Protection and Human Rights, pp. 26, download available at: <<https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-and-the-environment>>; Karel Vašák, 'Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights' (November 1977) UNESCO Courier *Southern Africa at grips with racism*, No. 11, p. 29

<sup>18</sup> *United Nations Framework Convention on Climate Change* (UNFCCC) (1992), UNTS vol. 1771, Art. 1(2)



concept of 'environment' as "natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors; property which forms part of the cultural heritage; and the characteristic aspect of the landscape."<sup>19</sup>

13. Despite the absence of an internationally recognised definition of the environment in the human rights context, the environment has been described in various terms in different legal instruments at the international and national level (see Sections III and IV below and Appendices 1, 2 and 3).

### **C. Specific characteristics**

14. When linking the environment to human rights obligations, several specific characteristics need to be considered.

#### Interconnection between the protection of the environment and human rights

15. Although there is no binding global instrument containing the right to a safe, clean, healthy and sustainable environment,<sup>20</sup> it is widely recognised that human rights and the environment are interconnected.<sup>21</sup> Many States have incorporated the explicit right to a healthy environment into their national constitutions (see Appendix 3) or legislation and it has been included in multiple regional treaties.<sup>22</sup> Regardless of the absence of a globally binding instrument containing an environmental human right, existing human rights such as, *inter alia*, the right to life, the right to private and family life and the right to health have also been successfully invoked in relation to environmental matters.<sup>23</sup>

16. There is a growing awareness of the importance to link human rights with environment.<sup>24</sup> It is imperative to note however, that this interconnectedness does not intend to substitute the specific sectors of broad ranging elements currently covered by existing international environmental and human rights instruments. Instead, the connection of

<sup>19</sup> *Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment* (21 June 1993), ETS No. 150, Art. 2(10); Explanatory Report to the Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment ETS No. 150 (1993), para. 42.

<sup>20</sup> The term "safe, clean, healthy and sustainable environment" used throughout this report, and particularly used in Chapter V, is taken from the Report of the Special Rapporteur. See: 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>21</sup> See for example: UN General Assembly, 'Right to a healthy environment: good practices. 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, p. 4, paras. 11-13.

<sup>22</sup> *Ibid.*; See Appendix 3.

<sup>23</sup> *Ibid.*, 4, para. 12; Council of Europe, *Manual on Human Rights and the Environment* (second edition 2012, Council of Europe Publishing), p. 8.

<sup>24</sup> UN General Assembly, 'Right to a healthy environment: good practices. 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, p. 4, paras. 11, 12, 13

human rights and the environment complements those sectors and facilitates their implementation. The right to environment as a human right therefore fills any of the existing gaps within or amongst those sectors or is applied in addition to them.

17. Human rights obligations and commitments have the ability to inform and strengthen international, regional and national environmental protection policymaking and promote overall coherence, legitimacy and sustainable outcomes. Human rights should thus be taken into consideration when developing environmental policies. “[A] human rights perspective helps to ensure that environmental and development policies improve the lives of the human beings who depend on a safe, clean, healthy and sustainable environment — which is to say, all human beings.”<sup>25</sup>

18. Whereas older treaties, such as the Universal Declaration of Human Rights (UDHR),<sup>26</sup> the European Convention of Human Rights (ECHR),<sup>27</sup> the European Social Charter (ESC),<sup>28</sup> the International Covenant on Civil and Political Rights (ICCPR)<sup>29</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>30</sup> do not contain a *specific* human right to a healthy environment (as “environmental issues were not yet a priority at that point in history”<sup>31</sup>) the more recent regional (both civil and political as well as socio-economic) treaties do. Those treaties include African Charter on Human and Peoples’ Rights<sup>32</sup> and its Additional Protocol on the Rights of Women in Africa (Maputo Protocol),<sup>33</sup> the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural rights (San Salvador Protocol),<sup>34</sup> the Arab Charter on Human

---

<sup>25</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, Framework principle 16, para. 55, p. 20; *Universal Declaration of Human Rights* (10 December 1948), UN Res. 217A(III), UN Doc. A/810

<sup>27</sup> *European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)* (4 November 1950) ETS No. 5

<sup>28</sup> *European Social Charter (Revised)* (3 May 1996) ETS No. 163

<sup>29</sup> *International Covenant on Civil and Political Rights (ICCPR)* (16 December 1966), UN Doc. A/6316, 999 UNTS 17

<sup>30</sup> *International Covenant on Economic, Social and Cultural Rights* (16 December 1966), UN Doc. A/6316, 993 UNTS 3

<sup>31</sup> European Court of Human Rights, ‘Dialogue between Judges 2020 The European Convention on Human Rights: living instrument at 70’ (2020), p. 5, 17

<sup>32</sup> Organization of African Unity (OAU), *African Charter on Human and Peoples’ Rights* (“Banjul Charter”) (27 June 1981) CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Art. 24

<sup>33</sup> Additional Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) (11 July 2003), Art. 18

<sup>34</sup> *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* (Protocol of San Salvador) (1988), OAS TS No. 69, Art. 11(1); “Although the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (known as the “Protocol of San Salvador”) expressly recognises a right to a healthy environment, alleged violations of this right cannot give rise to an individual petition governed by the American Convention.” See: Natalia Kobylarz, ‘The European Court of Human Rights, an Underrated Forum for Environmental Litigation’ (2019), p. 108, footnote 58, in *Sustainable Management of Natural Resources Legal Instrument and Approaches* (eds. Helle Tegner Anker, Birgitte Egelund Olsen) (Intersentia Ltd, 2018)

Rights<sup>35</sup> and the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration (AHRD)<sup>36</sup> (see Appendix 2).

19. Besides affirming that the protection of the environment is a human right, some of those instruments recognise it as a collective/group right too. A collective right in this context means that “the right to a healthy and decent environment, which is inextricably linked, both individually and collectively, to universally recognized fundamental human rights standards and principles, [...] may be demanded as such by their beneficiaries, i.e. individuals alone or in association with others, communities, associations and other components of civil society, as well as peoples.”<sup>37</sup> In the *African Commission on Human and Peoples’ Rights v. Republic of Kenya* (Ogiek case) judgment, the Committee of the African Charter on Human and Peoples’ Rights found that, in connection to the rights of indigenous peoples, “nothing prevents [...] peoples’ rights, such as [...] the right to a healthy environment (Article. 24) from being recognized, where necessary, specifically for the ethnic groups and communities that constitute the population of a State”<sup>38</sup> (see more on indigenous group rights under Chapter III.B. paragraph 72).

20. Similarly, in an Advisory Opinion, the Inter-American Court of Human Rights stated that “the human right to a healthy environment has been understood as a right with both individual and collective connotations. In its collective dimension, the right to a healthy environment is a universal interest, owed to both present and future generations. However, the right to a healthy environment also has an individual dimension, insofar as its violation may have direct or indirect repercussions on people due to their connection with other rights, such as the right to health, personal integrity or life, etc. Degradation of the environment can cause irreparable damage to human beings, so a medium healthy environment is a fundamental right for the existence of humanity”<sup>39</sup> (unofficial translation). Indeed, this makes sense as the degradation of the environment does often not merely affect individuals but entire populations, and the continued collective physical survival of humanity depends on its effective protection.<sup>40</sup> Environmental damage is thus often not only viewed in light of the

<sup>35</sup> *Arab Charter on Human Rights* (22 May 2004), Art. 38

<sup>36</sup> *ASEAN Human Rights Declaration* (AHRD) (18 November 2012), Art. 28(f)

<sup>37</sup> UN Economic and Social Council, ‘Human Rights and the Environment’ Final report prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur’ (6 July 1994), UN Doc. E/CN.4/Sub.2/1994/9, para. 31

<sup>38</sup> *African Commission on Human and Peoples’ Rights v. Republic of Kenya* (Judgment), (26 May 2017) Application no. 006/2012, para. 199

<sup>39</sup> Inter-American Court of Human Rights, Advisory Opinion OC-23/17 (15 November 2017), Requested by the Republic of Colombia, Environment and Human Rights (State Obligations in Relation to the Environment in the Framework of the Protection and Guarantee of the Rights to Life and Personal Integrity – Interpretation and Scope of Articles 4.1 and 5.1, in Relation to Articles 1.1 and 2 of the American Convention on Human Rights), para. 59

<sup>40</sup> UN General Assembly, ‘Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’ (15 July 2020), UN Doc. A/75/161, paras. 3-6.

negative effect on the individual right, but also as having wider implications on the overall enjoyment of a clean environment by all or by particular societal groups.

### Direct and indirect consequences

21. The implications of environmental degradation “can be divided into fast- and slow-onset events.”<sup>41</sup> Fast-onset events can include extreme weather events such as floods, storms, heat waves and drought, whereas slow-onset events are gradual changes, including, for example, sea-level rise, loss of biodiversity and desertification.<sup>42</sup> The negative consequences of (both fast-and slow-onset) environmental degradation on the enjoyment of human rights has direct as well as indirect consequences. For example, extreme weather events, industrial pollution, incorrect disposal of waste and nuclear accidents have a clear direct impact on a large variety of rights, including, *inter alia*, the right to life and property. However, environmental damage also largely affects rights indirectly. For instance, extreme weather events and pollution increase the overall pressure on health care systems, limiting effective protection of health and impairing the equal access to medical assistance. Increasing droughts and desertification strain the agricultural industry, affecting food quality and food security. Moreover, climate change induces (internal) displacement (environmental migrants and “refugees”), as original homelands gradually become barren, inhospitable or as rising sea-levels destroy the most important parts of small islands developing States.<sup>43</sup> Additionally, the above-mentioned factors heighten the overall risk of conflict, and therewith increase threats to (international) security.<sup>44</sup>

22. An imminent and recent example of the direct and indirect consequences of environmental degradation is the COVID-19 crisis. Human involvement in existing natural habitats, and the consequent erosion of ecosystems and biodiversity,<sup>45</sup> increases the likelihood of emerging infectious diseases such as COVID-19.<sup>46</sup> “Increasingly, humans,

---

<sup>41</sup> A. de Sherbinin, ‘Impacts of Climate Change as Drivers of Migration’ (*Migration Policy Institute*, 23 October 2020) <<https://www.migrationpolicy.org/article/impacts-climate-change-drivers-migration>> accessed at 9 March 2021

<sup>42</sup> *Ibid.*

<sup>43</sup> “Evidence suggests that fast-onset events are more likely to result in short-term displacement followed by a return to source areas, whereas slow-onset events are more likely to drive permanent migration.” See A. de Sherbinin, ‘Impacts of Climate Change as Drivers of Migration’ (*Migration Policy Institute*, 23 October 2020) <<https://www.migrationpolicy.org/article/impacts-climate-change-drivers-migration>> accessed at 9 March 2021; UN General Assembly, ‘Human rights of internally displaced persons’ Note by the Secretary-General (21 July 2020), UN Doc. A/75/207, paras. 1, 2, 13, 14; UN Economic and Social Council, “Progress in the implementation of the Programme of Action for the Sustainable Development of Small Island Developing States” Report of the Secretary-General, Addendum Climate change and sea level rise (19 January 1999), UN Doc. E/CN.17/1999/6/Add.1, para. 1

<sup>44</sup> UN General Assembly, ‘Human rights of internally displaced persons’ Note by the Secretary-General (21 July 2020), UN Doc. A/75/207, paras. 22, 23

<sup>45</sup> *Ibid.*, para. 11

<sup>46</sup> D. Patel, ‘Why Human Impact on the Environment is Leading to Infections Like COVID-19’ (2 April 2020) *Gavi*, <<https://www.gavi.org/vaccineswork/why-human-impact-environment-leading-infections-covid-19>> accessed at 28 September 2020

livestock and wildlife are interacting in new and unexpected ways, bringing new species – and their resident infections – together with unpredictable results.”<sup>47</sup> Epidemics have a direct effect on the right to life and the protection of health. Indirectly, amongst other things, they impair the overall equal access to medical assistance and interfere with the right to work. Moreover, “new research also suggests that the effects of air pollution on lungs, hearts and general health makes people more susceptible to the worst impacts of COVID-19.”<sup>48</sup> The accumulation of different forms of environmental damage can thus also aggravate the overall negative effect environmental degradation has on the enjoyment of human rights. Particularly climate change is considered as such a risk multiplier.<sup>49</sup>

### Effects on vulnerable and marginalized groups

23. While the implications mentioned above affect individuals and communities all around the world, environmental damage is felt most acutely by those segments of the population already in vulnerable situations. The European Environmental Agency has established that vulnerability is partially driven by individual characteristics, such as age and health<sup>50</sup>: “children, the elderly, those in poor health or with unhealthy behaviours [...], may demonstrate increased sensitivity to environmental stressors and therefore experience more acute impacts than a healthy adult subject to the same level of exposure.”<sup>51</sup> Additionally, social factors also affect vulnerability<sup>52</sup>: “there is a clear link between socio-economic status and exposure through the type of environment that low-income groups live in, the quality of housing and, to a lesser degree, their occupation.”<sup>53</sup> Indeed, people with lower socio-economic status often live closer to busy roads, railways and industrial areas, and have lower housing quality.<sup>54</sup> Those areas are significantly more polluted, which influences temperature, air quality and noise.<sup>55</sup> Moreover, people with a low socio-economic status are less protected against environmental hazards and “have the

---

<sup>47</sup> *Ibid.*

<sup>48</sup> Amnesty International, ‘Civil society calls on the Human Rights Council to recognize the right to a #HealthyEnvironment4All’ (14 September 2020) <<https://www.amnesty.org/en/latest/news/2020/09/civil-society-calls-on-the-human-rights-council-to-recognize-the-right-to-a-healthy-environment-for-all/>> accessed at 29 September 2020

<sup>49</sup> UN General Assembly, ‘Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’ (15 July 2020), UN Doc. A/75/161, para. 15

<sup>50</sup> European Environmental Agency (EEA), ‘Unequal exposure and unequal impacts: social vulnerability to air pollution, noise and extreme temperatures in Europe’ (2018), Report No. 22, p. 32, download available at: <<https://www.eea.europa.eu/publications/unequal-exposure-and-unequal-impacts/>>

<sup>51</sup> *Ibid.*, p. 15

<sup>52</sup> *Ibid.*, p. 32

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

<sup>54</sup> *Ibid.*, p. 33

<sup>55</sup> *Ibid.*

least buffer to face even modest climate hazards and suffer most from successive events with little time for recovery.”<sup>56</sup>

24. The exposure to environmental risks is thus already unevenly distributed,<sup>57</sup> which will only further increase with the worsening of the environmental crisis.

25. Additionally, the European Committee of Social Rights (“the Committee”) has established that in many cases Roma communities do not live in healthy environments.<sup>58</sup> Roma communities in Europe often experience discrimination and extreme poverty, which translates in the overall lack of access to public infrastructure and housing.<sup>59</sup> Consequently, this community has often settled in areas which “are vulnerable to being designated sites for both formal and informal environmentally problematic projects and activities (e.g., the location of a new landfill or illegal waste dump) as well as being ignored when it comes to infrastructure developments or improvements (e.g., public water system and/or sewage treatment).”<sup>60</sup> Toxic and hazardous waste and discharge from industries has negative health implications, and the authorization of such activities in or around the settlement of ethnic communities “disproportionality [interferes] with their rights”<sup>61</sup> and may lead to discrimination in environmental context. In the cases mentioned above, the Committee attributed the poor living conditions of Roma’s partially to the respective governments, as they had failed to adopt adequate preventive policies and protective measures to address the specific problems faced by Roma communities stemming from their living environment.<sup>62</sup> Consequently, the Committee considered that those States violated the principle of non-discrimination in conjunction with the right to health and the right to housing,<sup>63</sup> as they failed

<sup>56</sup> Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects* (2014, Cambridge University Press), p. 802, download available at: <<https://www.ipcc.ch/report/ar5/wg2/>>

<sup>57</sup> World Health Organization, ‘Environment and health risks: a review of the influence and effects of social inequalities’ (2010), p. 1, download available at: <<https://www.euro.who.int/en/health-topics/health-determinants/gender/publications/2010/environment-and-health-risks-a-review-of-the-influence-and-effects-of-social-inequalities>>

<sup>58</sup> *European Roma Rights Centre (ERRC) v. Bulgaria* (Decision on the Merits) (3 December 2008), ESCR Complaint no. 46/2007, para. 47; *European Roma and Travellers Forum (ERTF) v. Czech Republic* (Decision on the Merits) (17 May 2016), ESCR Complaint No.104/2014, para. 124; *Médecins du Monde - International v. France* (Decision on the Merits) (11 September 2012), ESCR Complaint No. 67/2011, para. 158

<sup>59</sup> K. Harper, *et al.*, ‘Environmental Justice and Roma Communities in Central and Eastern Europe’ (July 2009) *Environmental Policy and Governance*, p. 7, 9, download available at: <[https://scholarworks.umass.edu/anthro\\_faculty\\_pubs/5/?utm\\_source=scholarworks.umass.edu%2Fanthro\\_faculty\\_pubs%2F5&utm\\_medium=PDF&utm\\_campaign=PDFCoverPages](https://scholarworks.umass.edu/anthro_faculty_pubs/5/?utm_source=scholarworks.umass.edu%2Fanthro_faculty_pubs%2F5&utm_medium=PDF&utm_campaign=PDFCoverPages)>

<sup>60</sup> *Ibid.*, p. 12, 13

<sup>61</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, Framework principle 3, para. 9, p. 8

<sup>62</sup> *Médecins du Monde - International v. France* (Decision on the Merits) (11 September 2012), ESCR Complaint No. 67/2011, para. 44

<sup>63</sup> *European Roma Rights Centre (ERRC) v. Bulgaria* (Decision on the Merits) (3 December 2008), ESCR Complaint no. 46/2007, para. 51; *European Roma and Travellers Forum (ERTF) v. Czech Republic* (Decision on the Merits) (17 May

to safeguard clean water in Romani neighbourhoods,<sup>64</sup> promote environmental health awareness,<sup>65</sup> improve public health standards in housing and environment,<sup>66</sup> discourage settlements near hazardous areas, and ensure ecologically healthy surroundings.<sup>67</sup>

### Gender dimension

26. In 1995 The United Nations Fourth World Conference on Women in Beijing, recognized that “women remain largely absent at all levels of policy formulation and decision-making in natural resource and environmental management, conservation, protection and rehabilitation, and their experience and skills in advocacy for and monitoring of proper natural resource management too often remain marginalized in policy-making and decision-making bodies, as well as in educational institutions and environment-related agencies at the managerial level.”<sup>68</sup> Yet, women play an important role in “promoting an environmental ethic, reducing resource use, and reusing and recycling resources to minimize waste and excessive consumption [and] have a particularly powerful role in influencing sustainable consumption decisions.”<sup>69</sup> Although it is clear that their function is essential in the approach towards protecting the environment,<sup>70</sup> the average percentage of female members in parliaments of European States is about 30%,<sup>71</sup> and besides general underrepresentation, women are also underrepresented in environmental decision-making at both national and international levels.<sup>72</sup>

---

2016), ESCR Complaint No.104/2014, para. 128; *Médecins du Monde - International v. France* (Decision on the Merits) (11 September 2012), ESCR Complaint No. 67/2011, paras. 145, 153, 164, 183

<sup>64</sup> *European Roma Rights Centre (ERRC) v. Bulgaria* (Decision on the Merits) (3 December 2008), ESCR Complaint no. 46/2007, para. 47; *European Roma and Travellers Forum (ERTF) v. Czech Republic* (Decision on the Merits) (17 May 2016), ESCR Complaint No.104/2014, para. 124

<sup>65</sup> *European Roma Rights Centre (ERRC) v. Bulgaria* (Decision on the Merits) (3 December 2008), ESCR Complaint no. 46/2007, para. 48; *Médecins du Monde - International v. France* (Decision on the Merits) (11 September 2012), ESCR Complaint No. 67/2011, para. 152

<sup>66</sup> *European Roma Rights Centre (ERRC) v. Bulgaria* (Decision on the Merits) (3 December 2008), ESCR Complaint no. 46/2007, para. 47; *European Roma and Travellers Forum (ERTF) v. Czech Republic* (Decision on the Merits) (17 May 2016), ESCR Complaint No.104/2014, para. 124; *Médecins du Monde - International v. France* (Decision on the Merits) (11 September 2012), ESCR Complaint No. 67/2011, para. 21

<sup>67</sup> *Médecins du Monde - International v. France* (Decision on the Merits) (11 September 2012), ESCR Complaint No. 67/2011, para. 21

<sup>68</sup> The Fourth World Conference on Women, ‘Beijing Declaration and Platform for Action’, (Adopted at the 16th plenary meeting, on 15 September 1995), Chapter K ‘Women and the environment’, para. 249, p. 104

<sup>69</sup> *Ibid.*, para. 250, p. 104

<sup>70</sup> *Ibid.*, para. 251, p. 104; UN General Assembly, Human Rights Council (46<sup>th</sup> session) Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development ‘46/... Human rights and the environment’ (17 March 2021), UN Doc. A/HRC/46/L.6/Rev.1, p. 3

<sup>71</sup> IPU Parline, ‘Global and regional averages of women in national parliaments’, averages as of October 2020 Europe, <<https://data.ipu.org/women-averages>> accessed at 15 January 2020

<sup>72</sup> European Institute for Gender Equality, ‘Gender in environment and climate change’ (2016), p. 5; M. Prebble *et al.*, ‘Women’s Participation in Global Environmental Decision Making: An EGI supplemental report’ (October 2015), *IUCN Global Gender Office*

27. Connected hereto is that women and men are differently affected by environmental adaption and mitigation strategies. Too often, men and women are considered as a homogenous group in environmental adaption strategies. However, “where women and men live, their age, social class, ethnicity, religion, sexual orientation and other variables, interact in shaping the links between gender and the environment.”<sup>73</sup> As such, certain actions, for example, those that affect land use, “can shift the balance of economic and social resource distribution between women and men and among different communities, and can therefore exacerbate inequality.”<sup>74</sup> In order for environmental strategies to be both efficient and equally effective, gender differences need to be taken into account, e.g. through gender-based assessment frameworks.

28. Additionally, due to existing gender-gaps in pay, women often receive a lower income than men for the same work and are, consequently, more likely to fall within the vulnerable groups affected by the effects of environmental degradation (see paragraph 23). Additionally, due to the general unequal representation, women are unable to sufficiently use their knowledge to improve environmental adaption and mitigation strategies,<sup>75</sup> and there with also unable to improve their own situation; a vicious cycle. Hence, equal participation of women in environmental decision-making strategies is necessary, as it would not only provide for more gender-sensitive and gender-responsive environmental policies, but also contribute to gender equality, empowerment of women and alternative solutions to the effects of environmental degradation.<sup>76</sup>

### Transboundary context

29. The environmental crisis is a global phenomenon as its effects do not honour existing territorial boundaries. Indeed, the environmental crisis, both directly and indirectly, is amongst the most challenging contemporary global issues.<sup>77</sup>

30. As the effect of environmental issues are transnational, it can be difficult to assess where in the world environmental impact will be felt most and who bears primary responsibility for the damage. For example, “it is virtually impossible to disentangle the

---

<sup>73</sup> Sida, Brief ‘Gender and the Environment’ (2016), *Gender Tool Box*, p. 1

<sup>74</sup> European Institute for Gender Equality, ‘Gender in environment and climate change’ (2016), p. 6

<sup>75</sup> *Ibid.*, p. 7

<sup>76</sup> OECD, Issue Note Session 7 ‘Environmental justice and empowering women and youth’ *2020 Global Forum on Environment* (Paris, 5-6 March 2020), Mainstreaming Gender and Empowering Women for Environmental Sustainability, p. 8, download available at: <<http://www.oecd.org/env/Global-Forum-on-Environment-Mainstreaming-Gender-and-Empowering-Women-for-Environmental-Sustainability.htm>>

<sup>77</sup> Of the 22 UN global issues mentioned, 8 specifically mention environmental concerns (Africa, atomic energy, climate change, health, migration, oceans and law of the sea, youth, and refugees) and an additional three mention the need for sustainable development (food, water, ending poverty). See: United Nations, ‘Global Issues Overview’ <<https://www.un.org/en/sections/issues-depth/global-issues-overview/>> accessed at 29 September 2020



complex causal relationship linking historical greenhouse gas emissions of a particular country with a specific climate change-related effect, let alone with the range of direct and indirect implications for human rights.”<sup>78</sup> Nonetheless, “in view of the different contributions to global environmental degradation, States have common but differentiated responsibilities,”<sup>79</sup> and particularly developed States should “acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.”<sup>80</sup> Moreover, effective international cooperation “to prevent, reduce and remedy transboundary and global environmental harm”<sup>81</sup> is of great importance in order to “address transboundary and global threats to human rights.”<sup>82</sup>

### Impact on future generations

31. The negative environmental effects or degradation stemming from harmful environmental behaviour or activities are not always immediately measurable, and often lie in the future. Some of the physical impacts of global warming, for example, cannot be instantly classified as a human rights violation. Sea-level rises, for instance, albeit detrimental, occur gradually.<sup>83</sup>

32. As all generations are equally entitled to the rights attached to natural resources and a healthy environment,<sup>84</sup> the future environmental effects of current activities consequently have the potential to violate the rights of future and unborn generations related to their general living space, quality of life and health.<sup>85</sup> For this reason, several national constitutions and international instruments refer to the protection of future generations

<sup>78</sup> UN General Assembly, ‘Annual report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General. Report of the Office of the United Nations High Commissioner for Human Rights and the relationship between climate change and human rights’ (15 January 2019), UN Doc. A/HRC/10/61, para. 70

<sup>79</sup> Report of the United Nations Conference on Environment and Development’ (Rio de Janeiro, 3-14 June 1992), UN Doc. A/CONF/151/26/Rev.1 (Vol.I), p. 6, Annex I ‘Rio Declaration on Environment and Development’, Principle 7

<sup>80</sup> *Ibid.*

<sup>81</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’, Annex with ‘Framework Principles on Human Rights and the Environment’ (24 January 2018) UN Doc. A/HRC/37/59, p. 15, Framework principle 13

<sup>82</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’, Annex with ‘Framework Principles on Human Rights and the Environment’ (24 January 2018) UN Doc. A/HRC/37/59, p. 15, Framework principle 13, para. 36; *Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)* (1991), UNTS vol. 1989, Art. 2(1)

<sup>83</sup> C. Nunez, ‘Sea level rise, explained’ (*National Geographic*, 19 February 2019) <<https://www.nationalgeographic.com/environment/global-warming/sea-level-rise/>> accessed at 20 October 2020; UN General Assembly, ‘Human rights of internally displaced persons’ Note by the Secretary-General (21 July 2020), UN Doc. A/75/207, para. 2

<sup>84</sup> *Convention on the Conservation of Migratory Species of Wild Animals* (23 June 1979), Preamble; D.K. Anton; D.L. Shelton, *Environmental Protection and Human Rights* (2011, Cambridge University Press), p. 91, 92

<sup>85</sup> *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion), ICJ Rep. 1996, para. 29; *GabCikovo-Nagymaros Project (Hungary v. Slovakia)* (Judgment), ICJ Rep. 1997, para. 53

(intergenerational equity),<sup>86</sup> including, *inter alia*, the Stockholm Declaration,<sup>87</sup> the World Charter for Nature<sup>88</sup> and the WCED Legal Principles<sup>89</sup> (see below under United Nations in Section III and Appendix 3). Moreover, the Rio Conference on Environment and Development emphasized the importance of the inclusion of youth in decision-making process related to environmental matters.<sup>90</sup>

#### D. Short chapter recap

33. This chapter has identified that the environmental crisis is not merely an ecological, biological and climatological problem, but also has wide ranging socio and economic effects and impairs the general enjoyment of fundamental human rights. The implications of fast- and slow-onset environmental degradation have both direct as well as indirect human rights consequences, and currently mostly impacts specific societal, vulnerable (e.g., related to age, health, socio-economic status) and marginalized groups. Additionally, women are often more vulnerable for the effects of environmental degradation, due to already existing inequalities.

34. Consequently, this has increased the (inter)national recognition of the interconnectedness of human rights and the environment and highlighted the need for a more human-centred approach/rights-based approach when addressing issues related to environmental degradation. Additionally, it has been acknowledged that international cooperation is of great importance in order to adequately “address transboundary and global threats to human rights”<sup>91</sup> caused by environmental degradation. Negative environmental effects not only impact the present generation but will also have devastating consequences for the future generations.

---

<sup>86</sup> A.V. Cornescu, ‘The Generations of Human’s Rights’ (2009), *Days of Law: the Conference Proceedings, 1<sup>st</sup> edition*, Masaryk University, p. 5, 6, 7; E. Lambert, ‘The Environment and Human Rights’ (27 February 2020), Introductory Report to the High-Level Conference Environmental Protection and Human Rights, p. 27, download available at: <<https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-and-the-environment>>; See also Appendix 3: The majority of the Council of Europe member states have laid down the need for preservation of the environment within their Constitutions. Additionally, the Constitutions of Albania, Andorra, Armenia, France, Georgia, Germany, Hungary, Latvia, Luxembourg, Norway, Poland and Sweden explicitly refer to the protection and preservation of the environment in light of the needs of future generations.

<sup>87</sup> *Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration)* (16 June 1972), Principle 1, 2

<sup>88</sup> UN General Assembly, ‘World Charter for Nature’ (9 November 1982), UN Doc. A/RES/37/7

<sup>89</sup> United Nations, ‘Report of the World Commission on Environment and Development: Our Common Future’ (Brundtland Report) (1987), p. 286, download available at: <<http://www.environmentandsociety.org/mml/un-world-commission-environment-and-development-ed-report-world-commission-environment-and>>

<sup>90</sup> United Nations, ‘Report of the United Nations Conference on Environment and Development’ (Rio de Janeiro, 3-14 June 1992), UN Doc. A/CONF/151/26/Rev.1 (Vol.I), Annex II ‘Agenda 21’, p. 380, Chapter 25.4

<sup>91</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’, Annex with ‘Framework Principles on Human Rights and the Environment’ (24 January 2018) UN Doc. A/HRC/37/59, p. 15, Framework principle 13, para. 36; *Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)* (1991), UNTS vol. 1989, Art. 2(1)

### III. APPLICABLE LEGAL STANDARDS AND PRINCIPLES

35. Various specific legal instruments and political documents have been adopted at the European and international levels to ensure environmental protection, some of which are included in this chapter as examples. Some of these instruments refer to the right to a healthy environment. Other instruments characterize environmental harm to human health, life, property or food security. Some instruments also refer to environmental threats to specific groups, such as indigenous peoples.

36. The difference between those instruments is found in their legal basis. International environmental law treaties “primarily [focus] on environmental damage, rather than on its impact on human beings,”<sup>92</sup> whereas international human rights law treaties mainly focus on human impacts, “with little concern for the environmental dimension of the problem.”<sup>93</sup> Although there is no globally binding instrument recognizing the human right to a healthy environment yet, multiple international environmental as well as human rights instruments and their bodies have developed a clear link between the environment and human rights. Additionally, several non-binding international instruments have been specifically designed to address this gap. Some examples are provided below.

#### A. Council of Europe

##### Specific instruments on the environment with a human rights dimension

37. In 1979, the Council of Europe adopted the ***Convention on the Conservation of European Wildlife and Natural Habitats*** (Bern Convention).<sup>94</sup> This binding environmental law instrument aims to protect wild flora and fauna species and their habitats, with a special emphasis on endangered species.<sup>95</sup> While mainly focusing on environmental conservation, the Bern Convention acknowledges that the value of hereof lies in human interest, as “wild flora and fauna constitute a natural heritage of aesthetic, scientific, cultural, recreational, economic and intrinsic value that needs to be preserved and handed on to future generations.”<sup>96</sup>

<sup>92</sup> H.M. Osofsky, ‘Learning from Environmental Justice: A New Model for International Environmental Rights’ (2005) vol. 24 Stanford Environmental Law Journal, p. 78 in D.K. Anton; D.L. Shelton, *Environmental Protection and Human Rights* (2011, Cambridge University Press), p. 145

<sup>93</sup> *Ibid.*

<sup>94</sup> *Convention on the Conservation of European Wildlife and Natural Habitats* (1979), ETS No. 104; As of November 2020, all States to the Council of Europe, with the exception of the Russian Federation and San Marino, have ratified the Bern Convention.

<sup>95</sup> Council of Europe, ‘Details of Treaty No.104’ <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/104>> accessed at 9 November 2020

<sup>96</sup> *Convention on the Conservation of European Wildlife and Natural Habitats* (1979), ETS No. 104, Preamble

38. In 2000, the **European Landscape Convention** (Florence Convention) was adopted.<sup>97</sup> This binding convention intends to protect areas, “as perceived by people, whose character is the result of the action and interaction of natural and/or human factors.”<sup>98</sup> The Convention recognizes the importance of “sustainable development based on a balanced and harmonious relationship between social needs, economic activity and the environment,”<sup>99</sup> and acknowledges the dependence of the human identity, well-being and local cultures on the protection of natural heritage.<sup>100</sup>

39. In 2005, the **Council of Europe Framework Convention on the Value of Cultural Heritage for Society** (Faro Convention) was adopted.<sup>101</sup> Cultural heritage includes, *inter alia*, “all aspects of the environment resulting from the interaction between people and places through time.”<sup>102</sup> The Convention consequently requires States Parties to ensure to everyone, individually or collectively, “the right to benefit from the cultural heritage,”<sup>103</sup> and take the steps necessary to effectively conserve and preserve such heritage.<sup>104</sup> Similar to the Bern and Florence Conventions, the Faro Convention thus recognizes the importance of environmental protection as the foundation for continued human development.

40. The 1993 **Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment** (Lugano Convention), although not yet ratified by the requested nine countries in order to enter into force,<sup>105</sup> states that “one of the objectives of the Council of Europe is to contribute to the quality of life of human beings, in particular by promoting a natural, healthy and agreeable environment.”<sup>106</sup> The convention intends to hold “any individual or partnership or anybody governed by public or private law, whether corporate or not, including a State or any of its constituent subdivisions”<sup>107</sup> strictly liable

---

<sup>97</sup> *European Landscape Convention* (2000), ETS No. 176; As of November 2020, the majority of the States to the Council of Europe, with the exception of Albania, Austria, Germany, Liechtenstein, Malta (signatory), Monaco and the Russian Federation, have ratified the Florence Convention.

<sup>98</sup> *European Landscape Convention* (2000), ETS No. 176, Art. 1(a)

<sup>99</sup> *Ibid.*, Preamble

<sup>100</sup> *Ibid.*, Preamble, Art. 5(a)

<sup>101</sup> *Council of Europe Framework Convention on the Value of Cultural Heritage for Society* (2005), ETS No. 199; States Parties to the Faro Convention as of November 2020: Armenia, Austria, Bosnia and Herzegovina, Croatia, Finland, Georgia, Hungary, Latvia, Luxembourg, Montenegro, North Macedonia, Norway, Portugal, Republic of Moldova, Serbia, Slovak Republic, Slovenia, Switzerland and Ukraine.

States that have signed but not ratified the Faro Convention as of November 2020: Albania, Belgium, Bulgaria, Italy, San Marino and Spain.

<sup>102</sup> *Council of Europe Framework Convention on the Value of Cultural Heritage for Society* (2005), ETS No. 199, Art. 2(a)

<sup>103</sup> *Ibid.*, Art. 4(a)

<sup>104</sup> *Ibid.*, Art. 5(b)

<sup>105</sup> *Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment* (21 June 1993), ETS No. 150; States that have signed the Lugano Convention as of November 2020: Cyprus, Finland, Greece, Iceland, Italy, Liechtenstein, Luxembourg, the Netherlands and Portugal.

<sup>106</sup> *Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment* (21 June 1993), ETS No. 150, Preamble

<sup>107</sup> *Ibid.*, Art. 2(6)

(polluter pays principle)<sup>108</sup> for damage resulting from activities dangerous to the environment.<sup>109</sup> Additionally, it acknowledges restorative remedies as solution to environmental damage. Restorative remedies include “any reasonable measures aiming to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment.”<sup>110</sup> Correspondingly, it also broadens the *locus standi* to include environmental associations and foundations,<sup>111</sup> and provides for the right of access to “information relating to the environment held by public authorities.”<sup>112</sup>

41. Similar to the Lugano Convention, the ***Convention on the Protection of the Environment through Criminal Law*** (Strasbourg Convention) of 1998 neither has the requisite three ratifications to enter into force<sup>113</sup> (however, there is currently an ongoing reflection on whether to update or revise it). This instrument provides that “the life and health of human beings, the environmental media and fauna and flora must be protected by all possible means”<sup>114</sup> and works on the assumption that “whilst the prevention of the impairment of the environment must be achieved primarily through other measures, criminal law has an important part to play in protecting the environment.”<sup>115</sup> The Convention calls upon Contracting Parties to, with respect to intentional or negligently caused environmental harm, “adopt such appropriate measures as may be necessary to establish as criminal offences or administrative offences, liable to sanctions or other measures under its domestic law”<sup>116</sup> including “criminal or administrative sanctions or measures on legal persons.”<sup>117</sup> The approach is therefore overarching, acknowledging the interaction between human beings and their natural environment. Similar to the Lugano Convention, the Strasbourg Convention mentions that sanctions for environmental offences “may include reinstatement of the environment”<sup>118</sup> (restorative remedies), and encourages States Parties to broaden *locus standi* by granting “any group, foundation or association which, according to its

---

<sup>108</sup> *Ibid.*, Preamble

<sup>109</sup> *Ibid.*, Arts. 6, 7

<sup>110</sup> *Ibid.*, Art. 2(8)

<sup>111</sup> *Ibid.*, Art. 18

<sup>112</sup> *Ibid.*, Art. 14(1)

<sup>113</sup> *Convention on the Protection of Environment through Criminal Law* (1998), ETS No. 172; States that have ratified the Strasbourg Convention as of November 2020: Estonia.

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

The Strasbourg Convention is also open to ratification by non-European States.

<sup>114</sup> *Convention on the Protection of Environment through Criminal Law* (1998), ETS No. 172, Preamble

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*, Art. 4, see also Arts. 2, 3

<sup>117</sup> *Ibid.*, Art. 9

<sup>118</sup> *Ibid.*, Art. 6

statutes, aims at the protection of the environment, the right to participate in criminal proceedings concerning offences established in accordance with this Convention.”<sup>119</sup>

### General human rights instruments with an environmental dimension

42. Although the **European Convention for the Protection of Human Rights and Fundamental Freedoms** (“the Convention”/ECHR) and the **European Social Charter** (“the Charter”/ESC) do not expressly guarantee a right to a healthy environment, they indirectly offer a certain degree of protection with regards to environmental matters through the case-law of the European Court of Human Rights (“the Court”/ECtHR) and the European Committee on Social Rights (“the Committee”/ECSR).<sup>120</sup> Both the Court as well as the Committee have emphasized the evolutive nature of both instruments. The Convention and the Charter are living instruments, which, in order to effectively protect, need to be interpreted in light of present-day conditions.<sup>121</sup> Such conditions are considered to include the current environmental crisis.<sup>122</sup>

43. As mentioned above, the Convention does not explicitly recognise the right to a healthy environment.<sup>123</sup> Yet, through its case-law, the Court has identified that issues related to the environment may violate an individuals’ the right to life (Article 2), the prohibition of torture (Article 3), the right to a fair trial and to have access to a court (Article 6), the right to respect or private and family life as well as the home (Article 8), the freedom of expression (Article 10), the freedom of assembly and association (Article 11), and the right to an effective remedy (Article 13) and the right to the peaceful enjoyment of one’s

---

<sup>119</sup> *Ibid.*, Art. 11

<sup>120</sup> Council of Europe (2012), *Manual on Human Rights and the Environment* (2nd edn), p. 7.

<sup>121</sup> *Tyrer v. The United Kingdom* (Judgment) (25 April 1978), ECHR Application no. 5856/72, para. 31; *Fredin v. Sweden* (No. 1) (Judgment) (18 February 1991), ECHR Application no. 12033/86, para. 48; *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits), ECSR Complaint No. 30/2005, para. 194

<sup>122</sup> As was also recently emphasized, *inter alia*, at the opening of the Court’s judicial year, the High-level Conference on Environmental Protection and Human Rights and the Human Rights for the Planet Conference, see: European Court of Human Rights, ‘Dialogue between Judges 2020 The European Convention on Human Rights: living instrument at 70’ (2020); Council of Europe, ‘High-level Conference - Environmental Protection and Human Rights’ (27 February 2020) <<https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-and-the-environment>> accessed at 9 November 2020; Council of Europe, ‘Human Rights for the Planet High Level Conference on Human Rights and Environmental Protection’ (5 October 2020) <<https://www.coe.int/en/web/portal/human-rights-for-the-planet>> accessed at 9 November 2020

<sup>123</sup> European Court HR, *Apanasewicz v. Poland*, No. 6854/07, 3 May 2011, para. 94, whilst accepting that an issue might arise under Article 8 (and accepting that there had been a violation of Article 8 in this case). Also, European Court HR: Fifth Section, *Flamenbaum and Others v. France*, Nos. 3675/04 and 23264/04, 13 December 2012, para. 133; Third Section, *Lars and Astrid Fägerskiöld v. Sweden*, decision as to admissibility, No. 37664/04, 26 February 2008; Third Section, *Chiş v. Romania*, decision as to admissibility, No. 55396/07, 9 September 2014, para. 29; Fourth Section, *Frankowski and Others v. Poland*, decision as to admissibility, No. 25002/09, 20 September 2011; Second Section, *Aydin and Others v. Turkey*, decision, No. 40806/07, 15 May 2012, para. 24; Second Section, *Otgon v. the Republic of Moldova*, judgment, No. 22743/07, 25 October 2016, para. 15; Fourth Section, *Fieroiu and Others v. Romania*, decision, No. 65175/10, 23 May 2017, para. 18.

possessions (Article 1 of Protocol No. 1).<sup>124</sup> Thus, the case-law of the ECtHR has gradually developed an environmental dimension to certain rights protected under the European Convention on Human Rights.

44. Amongst many other cases, an example of a recent judgment is the *Cordella v. Italy* case. This case concerned 161 applicants who lived in or around the city of Taranto and complained about the environmental and health related impacts of the toxic emissions produced by a local steel plant.<sup>125</sup> The Court noted that already since the 1970s scientific studies had proved the polluting effect from the steel plant on the environment and human health.<sup>126</sup> Yet, depollution plans lacked implementation and the Court even found that the national authorities themselves obstructed the cessation of the polluting activities of the plant.<sup>127</sup> In light hereof, the Court established that the national authorities had failed to take all the necessary measures to ensure the effective protection of the right of the applicants to respect for their private and family life under Article 8 of the Convention.<sup>128</sup> Moreover, as it proved impossible for the applicants to obtain measures that guaranteed the clean-up of the areas concerned by the toxic emissions of the steel plant, the Court also found that there had been a violation of Article 13 of the Convention.

45. Another example of a recent judgment is the *Yaşar v. Romania* case. Here the applicant complained that the confiscation of his vessel amounted to an unlawful and disproportionate interference with his right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1.<sup>129</sup> The Court disagreed however, stating that that the interference complained of pursued the legitimate aim of preventing offences relating to illegal fishing in the Black Sea; since such activities pose a serious threat to the biological resources in the area, this aim serves the general interest.<sup>130</sup> Therefore, the Court found no violation of Article 1 of Protocol No. 1.

46. Similarly, the Charter does not explicitly mention the right to a healthy environment either. However, neglect by States of environmental issues may amount to non-compliance with their obligations to fulfil particular social rights.<sup>131</sup> Not taking measures to avoid or

---

<sup>124</sup> Council of Europe, *Manual on Human Rights and the Environment* (second edition 2012, Council of Europe Publishing), p. 8

<sup>125</sup> *Cordella and Others. v. Italy* (Judgment) (24 January 2019), ECHR Application no. 54414/13 and 54264/15, paras. 13, 14

<sup>126</sup> *Ibid.*, paras. 164 – 166

<sup>127</sup> *Ibid.*, paras. 167 – 169

<sup>128</sup> *Ibid.*, para. 173

<sup>129</sup> *Yaşar v. Romania* (Judgment) (25 November 2019), ECHR Application no. 64863/13, para. 38

<sup>130</sup> *Ibid.*, para. 59

<sup>131</sup> G. Palmisano, President of the European Committee of Social Rights, Speech at the High-level Conference “Environmental Protection and Human Rights” (Strasbourg, 27 February 2020), p. 1, download available at: <<https://rm.coe.int/palmisano-statement-environment-humanrights-27-02-20/16809cbfec>>

reduce deterioration of the environment can thus, in itself, lead to the infringement of specific social rights.<sup>132</sup> Such rights include, *inter alia*, the right to just conditions of work (Article 2), the right to safe and healthy working conditions (Article 3), the right to protection of health (Article 11), and the right to housing (Article 31). Article 11 of the Charter, recognises that “everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable”.<sup>133</sup> On this basis, the Committee has interpreted the right to health as including the right to a “healthy environment”<sup>134</sup> and therefore requires States, when submitting their periodic reports, to identify measures taken with a view to ensuring such an environment for individuals (and not just for workers).<sup>135</sup> In 2019, the Committee has additionally stated that the “protection and creation of a healthy environment [is] at the heart of the Charter’s system of guarantees and may be relevant to the application of a variety of Charter provisions more specifically.”<sup>136</sup>

47. In its review of the periodic State reports, the Committee has particularly focused on ambient and indoor air pollution, water quality, waste management, exposure to chemicals and ionizing radiation, food poisoning and food safety,<sup>137</sup> noise pollution and asbestos. The Committee endeavours to obtain factual data on levels of pollution and the implementation of national action plans. While multiple States Parties comply with the measures taken in this field, the Committee also frequently notes the insufficient information it receives from States,<sup>138</sup> and sometimes defers its conclusions pending receipt of further information.<sup>139</sup>

---

<sup>132</sup> *Ibid.*

<sup>133</sup> See *European Social Charter* (26 February 1961), ETS No. 35, and *European Social Charter (Revised)* (3 May 1996), ETS No. 163, Part I, para. 11, corresponding Article 11: “With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia*: (1) to remove as far as possible the causes of ill-health; [...]”

<sup>134</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005, para. 195

<sup>135</sup> *Ibid.*, para. 202

<sup>136</sup> *ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland* (Decision on Admissibility and on Immediate Measures) (22 January 2019), ECSR Complaint No. 163/2018, para. 12.

<sup>137</sup> With education and “healthy eating” components as well: European Committee of Social Rights, Conclusions XVIII-2, 30 June 2007, XVIII-2/def/LUX/11/2/EN. Food safety has been covered since 2001 following the Creutzfeldt-Jakob disease scandal. European Committee of Social Rights, Conclusions XXI-2, concerning Luxembourg, 26 March 2018, XXI-2/def/LUX/11/3/EN.

<sup>138</sup> For example, European Committee of Social Rights, Conclusions XX-2, for Germany, 16 January 2014, XX-2/def/DEU/11/3/EN.

<sup>139</sup> European Committee of Social Rights, Conclusions 2017, concerning Lithuania, 24 January 2018, 2017/def/LTU/11/3/EN.



48. Additionally, several complaints brought under the collective complaint procedure (by certain employer's organisations, trade unions or NGOs)<sup>140</sup> have either been about or involved the right to access to a healthy environment.<sup>141</sup>

## Parliamentary Assembly

### *Recommendations*<sup>142</sup>

49. The Parliamentary Assembly has attempted to supplement the European Convention on Human Rights with an additional Protocol on the environment on three occasions. In ***Recommendation 1431 (1999) – Future action to be taken by the Council of Europe in the field of environment protection***,<sup>143</sup> for instance, the Assembly asked the Committee of Ministers to: “11.2 instruct the appropriate bodies within the Council of Europe to examine the feasibility of: [...] b. drafting an amendment or an additional protocol to the European Convention on Human Rights concerning the right of individuals to a healthy and viable environment.”<sup>144</sup>

<sup>140</sup> The Additional Protocol Providing for a System of Collective Complaints allows certain specific organisations to bring collective complaints against a State party to it, before the Committee. “They can do so if they believe that a State Party to the European Social Charter (and to the Additional Protocol) has failed to implement the Charter correctly. These organisations include:

(1) Certain international organisations of employers and trade unions including the European Trade Union Confederation (ETUC), for employees, as well as Business Europe and International Organisation of Employers (OIE), for employers;  
 (2) Certain international non-governmental organisations which have participative status with the Council of Europe.  
 (3) National organisations of employers and trade unions in the country concerned.”  
 (4) National NGOs recognised by a Contracting State to govern complaints against it. See: *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints* (1995), ETS No. 158, Arts. 1, 2; Council of Europe, ‘How can (I)NGOs engage with the European Committee of Social Rights?’ <[https://www.coe.int/en/web/european-social-charter/ingos-engagement-with-ecsr#%2527676066%22:\[1\]](https://www.coe.int/en/web/european-social-charter/ingos-engagement-with-ecsr#%2527676066%22:[1])> accessed at 26 October 2020

<sup>141</sup> There are two complaints which were specifically filed regarding the right to a healthy environment under Article 11, namely: *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005 and *International Federation of Human Rights Leagues (FIDH) v. Greece* (Decision on the Merits) (23 January 2013) ESCR Complaint No. 72/2011. Other complaints, which were not filed under the right to a healthy environment as such, but where the need for a healthy environment was discussed are: *European Roma Rights Centre (ERRC) v. Bulgaria* (Decision on the Merits) (3 December 2008), ESCR Complaint no. 46/2007, *European Roma and Travellers Forum (ERTF) v. Czech Republic* (Decision on the Merits) (17 May 2016), ESCR Complaint No.104/2014, and *Médecins du Monde - International v. France* (Decision on the Merits) (11 September 2012), ESCR Complaint No. 67/2011.

<sup>142</sup> “Recommendations contain proposals addressed to the Committee of Ministers, the implementation of which is within the competence of governments.” See: Parliamentary Assembly, Assembly Public Documents, <<https://pace.coe.int/en/pages/official-documents>> accessed at 8 April 2021

<sup>143</sup> Parliamentary Assembly, *Recommendation 1431 (1999) Future action to be taken by the Council of Europe in the field of environment protection*

<sup>144</sup> In response, the Committee of Ministers stated that “the recognition of the individual and legally enforceable nature of the human right to a healthy and viable environment meets at present certain difficulties, legal and conceptual”, Committee of Ministers, Doc. 8892, Reply to Recommendation 1431 (1999) – Future action to be taken by the Council of Europe in the field of environment protection, 20 November 2000.

50. Furthermore the Parliamentary Assembly has in its **Recommendation 1614 (2003) on the environment and human rights**<sup>145</sup> and, moreover, in its **Recommendation 1885 (2009) on drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment**,<sup>146</sup> proposed adding an environmental component to the European Convention on Human Rights. The Parliamentary Assembly has repeatedly highlighted the close link between public health and the state of the environment, notably by reaffirming “a fundamental right of citizens to live in a healthy environment”<sup>147</sup> and “a duty of society as a whole and each individual in particular to pass on a healthy and viable environment to future generations.”<sup>148</sup>

51. In **Recommendation 1862 (2009) on Environmentally induced migration and displacement: a 21<sup>st</sup> century challenge**,<sup>149</sup> the Assembly encouraged “member states to assume a pioneering role in standard setting in the field of protection of people compelled to leave their homes mainly or exclusively for environmental reasons,”<sup>150</sup> and expressed its concern “that people in Europe have no specific legal remedy against environmental degradation and climate change, due to human activity, that affect their health and safety.”<sup>151</sup> Consequently, it advised the Committee of ministers again to “consider adding a new protocol to the European Convention on Human Rights (ETS No. 5), concerning the right to a healthy and safe environment.”<sup>152</sup>

### *Resolutions*<sup>153</sup>

52. Additionally, the Parliamentary Assembly has put forward several resolutions with respect to the environment. In **Resolution 1552 (2007) on Capture of carbon dioxide**<sup>154</sup> as a means of fighting climate change the Assembly recognized that “climate change is one of the major threats to sustainable development and the world economy, as well as to mankind’s health and welfare,”<sup>155</sup> and calls on the Council of Europe member and observer states to, *inter alia*, ensure “further the implementation of the targets set in the Kyoto

<sup>145</sup> Parliamentary Assembly, *Recommendation 1614 (2003) Environment and human rights*

<sup>146</sup> Parliamentary Assembly, *Recommendation 1885 (2009) Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment*

<sup>147</sup> Parliamentary Assembly, *Recommendation 1885 (2009) Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment*, para. 1

<sup>148</sup> *Ibid.*

<sup>149</sup> Parliamentary Assembly, *Recommendation 1862 (2009) Environmentally induced migration and displacement: a 21<sup>st</sup> century challenge*

<sup>150</sup> *Ibid.*, para. 3

<sup>151</sup> *Ibid.*, para. 5

<sup>152</sup> *Ibid.*, para. 6.3

<sup>153</sup> “Resolutions embody decisions by the Assembly on questions, which it is empowered to put into effect, or expressions of view, for which it alone is responsible.” See: Parliamentary Assembly, Assembly Public Documents, <<https://pace.coe.int/en/pages/official-documents>> accessed at 8 April 2021

<sup>154</sup> Parliamentary Assembly, *Resolution 1552 (2007) Capture of carbon dioxide as a means of fighting climate change*

<sup>155</sup> *Ibid.*, para. 1

Protocol to the United Nations Framework Convention on Climate Change,”<sup>156</sup> “co-ordinate their activities at European and global level, particularly through cooperation with United Nations bodies and other international organisations and institutions,”<sup>157</sup> and adopt a variety of specific (national) measures and policies.<sup>158</sup> Similarly, in **Resolution 1682 (2009) on Challenges posed by climate change**,<sup>159</sup> the Assembly acknowledged that “climate change raises important questions about social justice, equity and human rights across countries and across generations,”<sup>160</sup> and noted that “that poor countries and vulnerable citizens will suffer the most, even though they have contributed the least to global warming,”<sup>161</sup> which raised the concern that the failure to act would result in “further jeopardising their right to life, and their access to water, to food, to good health, to a gainful livelihood, and to decent housing and security.”<sup>162</sup> In **Resolution 2210 (2018) on Climate change and implementation of the Paris Agreement**,<sup>163</sup> the Assembly called “for strong national measures to promote the implementation of the Paris Agreement at all levels of governance.”<sup>164</sup>

53. Besides climate change, the Assembly has also addressed the issue of migration in context of environmental degradation. In **Resolution 2115 (2016) on Forced migration: a new challenge**,<sup>165</sup> the Assembly recognized the contributing factor of climate change, natural, chemical or nuclear disasters to worldwide displacement.<sup>166</sup> In light hereof, the Assembly recommended to member States to, *inter alia*, “give greater priority to devising protection policies and norms for victims of natural, chemical or nuclear disasters and for the victims of the consequences of climate change,”<sup>167</sup> “acknowledge the vulnerability of these groups and ensure that their fundamental rights are fully observed,”<sup>168</sup> and review, revise, adopt and implement measures, and ensure the respect of the rights of displaced persons.<sup>169</sup> In **Resolution 2173 (2017) on A comprehensive humanitarian and political**

---

<sup>156</sup> *Ibid.*, para. 12.1.

<sup>157</sup> *Ibid.*, para. 12.3.

<sup>158</sup> *Ibid.*, para. 12

<sup>159</sup> Parliamentary Assembly, *Resolution 1682 (2009) Challenges posed by climate change*, download available at: <<https://pace.coe.int/en/files/17772#trace-5>>

<sup>160</sup> *Ibid.*, para. 11

<sup>161</sup> *Ibid.*, para. 9

<sup>162</sup> *Ibid.*, para. 10

<sup>163</sup> Parliamentary Assembly, *Resolution 2210 (2018) Climate change and implementation of the Paris Agreement*, download available at: <<https://pace.coe.int/en/files/24694>>

<sup>164</sup> *Ibid.*, para. 6

<sup>165</sup> Parliamentary Assembly, *Resolution 2115 (2016) Forced migration: a new challenge*, download available at: <<https://pace.coe.int/en/files/22756>>

<sup>166</sup> *Ibid.*, paras. 1, 5

<sup>167</sup> *Ibid.*, para. 10.1.

<sup>168</sup> *Ibid.*, para. 10.2.

<sup>169</sup> *Ibid.*, para. 10

**response to the migration and refugee crisis and the continuing flows into Europe**,<sup>170</sup> the Assembly considered that member States should acknowledge that “one of the next waves of refugees will certainly be driven by extreme climatic unbalance, and that it is therefore essential to work together on devising new provisions in international law for the protection of the victims of forced migration due to climate change, while promoting the full implementation of the Paris Agreements and the successive international conferences on climate change in order to limit the negative effects of man-made ecological disasters in the making.”<sup>171</sup> Similarly, in **Resolution 2268 (2019) on Development co-operation: a tool for preventing migration crises**<sup>172</sup> the Assembly called “on all member States to invest globally in efforts to contain climate change which, it is estimated, will force 50 million people to leave their homes in African countries by 2050.”<sup>173</sup> Finally, in **Resolution 2307 (2019) on A legal status for “climate refugees”**,<sup>174</sup> the Assembly “considers that the absence of a legally binding definition of “climate refugees” does not preclude the possibility of developing specific policies to protect people who are forced to move as a consequence of climate change,”<sup>175</sup> and “therefore calls for specific action to be taken at local, national and international levels”<sup>176</sup> including increasing “local communities’ thresholds of resilience,”<sup>177</sup> improving “the capacity to react and cope with disasters at national level,”<sup>178</sup> enhancing “co-ordination, mediation and funding”<sup>179</sup> and developing “in the asylum systems of member States and in international law protection for people fleeing long-term climate change in their native country.”<sup>180</sup>

54. Moreover, in **Resolution 2286 (2019) on Air pollution: a challenge for public health in Europe**,<sup>181</sup> the Assembly affirmed that “air pollution remains the largest environmental risk to our health, causing disease and shortening lives.”<sup>182</sup> As “clean air is a basic human right [and] wherever we live, we need air that is breathable and that does not

<sup>170</sup> Parliamentary Assembly, *Resolution 2173 (2017) A comprehensive humanitarian and political response to the migration and refugee crisis and the continuing flows into Europe*, download available at: <<https://pace.coe.int/en/files/23961#trace-6>>

<sup>171</sup> *Ibid.*, para. 7.3.

<sup>172</sup> Parliamentary Assembly, *Resolution 2268 (2019) Development co-operation: a tool for preventing migration crises*, download available at: <<https://pace.coe.int/en/files/26467>>

<sup>173</sup> *Ibid.*, para. 7

<sup>174</sup> Parliamentary Assembly, *Resolution 2307 (2019) on A legal status for “climate refugees”*, download available at: <<https://pace.coe.int/en/files/28239>>

<sup>175</sup> *Ibid.*, para. 3

<sup>176</sup> *Ibid.*, para. 5

<sup>177</sup> *Ibid.*, para. 5.1.

<sup>178</sup> *Ibid.*, para. 5.2.

<sup>179</sup> *Ibid.*, para. 5.3.

<sup>180</sup> *Ibid.*, para. 5.4.

<sup>181</sup> Parliamentary Assembly, *Resolution 2286 (2019) Air pollution: a challenge for public health in Europe*, download available at: <<https://pace.coe.int/en/files/27716>>

<sup>182</sup> *Ibid.*, para. 1

shorten or impair our lives,”<sup>183</sup> “the Assembly urges member States to make action against air pollution a political priority on the grounds of the imperative to protect public health.”<sup>184</sup> **Resolution 2285 (2019) on Sustainable urban development fostering social inclusion**<sup>185</sup> addressed the concern of the Assembly “about urban sprawl, which exerts massive pressure on the environment and undermines the quality of life in urban areas.”<sup>186</sup> “The goals of economic development can, but must not, conflict with environmental protection. New arrivals to cities are often perceived as a threat to the well-being of the existing population,”<sup>187</sup> and “the Assembly is convinced that sustainable urban development must focus on people above all.”<sup>188</sup> As such, it calls on the Council of Europe member States to, *inter alia*, take action on domestic level, ensure participation and co-operate internationally.<sup>189</sup> In **Resolution 2329 (2020) on Lessons for the future from an effective and rights-based response to the Covid-19 pandemic**,<sup>190</sup> the Assembly emphasized that “efforts must be stepped up [...] to protect the ecosystems that underpin human, animal and environmental health. This includes identifying and fighting climate change as a driver of emerging health threats and improving policies regulating animal agriculture and addressing human destruction of pristine natural habitats.”<sup>191</sup>

### *Motions*<sup>192</sup>

55. In the past two years, several motions have been tabled by different Parliamentary Assembly committees with the following headings:

- *Inaction on climate change – a violation of children's rights*<sup>193</sup>
- *Climate change and the rule of law: baseline study*<sup>194</sup>

---

<sup>183</sup> *Ibid.*, para. 4

<sup>184</sup> *Ibid.*, para. 8

<sup>185</sup> Parliamentary Assembly, *Resolution 2285 (2019) Sustainable urban development fostering social inclusion*, download available at: <<https://pace.coe.int/en/files/27714>>

<sup>186</sup> *Ibid.*, para. 3

<sup>187</sup> *Ibid.*, para. 4

<sup>188</sup> *Ibid.*, para. 9

<sup>189</sup> *Ibid.*, para. 10

<sup>190</sup> Parliamentary Assembly, *Resolution 2329 (2020) Lessons for the future from an effective and rights-based response to the Covid-19 pandemic*, download available at: <<https://pace.coe.int/en/files/28676>>

<sup>191</sup> *Ibid.*, para. 10

<sup>192</sup> “Motions for a recommendation or resolution have to be tabled by twenty or more members of the Assembly belonging to at least five national delegations. Motions are then referred to committees for report and possibly to other committees for opinion.” The motions have not been discussed in the Assembly and commit only those who have signed them. See: Parliamentary Assembly, *Assembly Public Documents*, <<https://pace.coe.int/en/pages/official-documents>> accessed at 8 April 2021

<sup>193</sup> Motion 14947 (2019), Committee on Social Affairs, Health and Sustainable Development, download available at: <<https://pace.coe.int/en/files/28084>>

<sup>194</sup> Motion 14972 (2019), Committee on Social Affairs, Health and Sustainable Development, download available at: <<https://pace.coe.int/en/files/28152>>

- *More participatory democracy to tackle climate change*<sup>195</sup>
- *Artificial intelligence and climate change*<sup>196</sup>
- *Re-establishing sustainable living conditions for autochthonous communities in balance with their natural environments in member States*<sup>197</sup>
- *Impact of armed conflicts on transboundary environmental damage*<sup>198</sup>
- *Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe*<sup>199</sup>
- *Climate and migration*<sup>200</sup>
- *Air quality strategy to reduce the spread of coronavirus*<sup>201</sup>

### The Council of Europe Commissioner for Human Rights

56. In June 2019, the Council of Europe Commissioner for Human Rights, Ms Dunja Mijatović, published a ***Comment on the interdependence between human rights and the environment***.<sup>202</sup> In her comment the Commissioner summarizes briefly the jurisprudence of the Court and the Committee on issues related to human rights and the environment. The Commissioner particularly insists on the critical role of, and risks faced by environmental human rights defenders, mentions the role of Ombudsman institutions in this field and stated that “it is extremely important for States to educate people from an early age of the need to preserve the environment and teach them how to do so.”<sup>203</sup>

57. The Commissioner calls on Council of Europe member States to adopt and implement ambitious policies to preserve the environment, to focus on education of the public, and to fulfil people’s rights to information, participation and redress. She also encourages member States to support the explicit recognition of the right to a healthy environment at the UN level.

<sup>195</sup> Motion 15048 (2020), Committee on Political Affairs and Democracy, download available at: <https://pace.coe.int/en/files/28475>

<sup>196</sup> Motion 15068 (2020), download available at: <https://pace.coe.int/en/files/28576>

<sup>197</sup> Motion 15072 (2020), download available at: <https://pace.coe.int/en/files/28602>

<sup>198</sup> Motion 15074 (2020), download available at: <https://pace.coe.int/en/files/28605>

<sup>199</sup> Motion 15108 (2020), Committee on Social Affairs, Health and Sustainable Development, download available at: <https://pace.coe.int/en/files/28644>

<sup>200</sup> Motion 15113 (2020), Committee on Migration, Refugees and Displaced Persons, download available at: <https://pace.coe.int/en/files/28652>

<sup>201</sup> Motion 15126 (2020), Committee on Social Affairs, Health and Sustainable Development, download available at: <https://pace.coe.int/en/files/28705>

<sup>202</sup> D. Mijatović, ‘Living in a clean environment: a neglected human rights concern for all of us’ (4 June 2019) Council of Europe, <https://www.coe.int/en/web/commissioner/-/living-in-a-clean-environment-a-neglected-human-rights-concern-for-all-of-us> accessed at 25 September 2020

<sup>203</sup> *Ibid.*

## B. United Nations

### Specific instruments on the environment with a human rights dimension

58. Already in 1971, the ***Convention on Wetlands of International Importance especially as Waterfowl Habitat*** acknowledged the interdependence of humanity and the environment.<sup>204</sup> However, the ***Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration)*** adopted at the UN Conference on the Human Environment in 1972 was the real starting point for making the link between human rights and the environment.<sup>205</sup> Principle 1 states that “man should have the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and wellbeing, and he bears a solemn responsibility to protect and improve the environment for present and future generations. [...]”<sup>206</sup> Principle 2 further emphasises that natural resources “must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.”<sup>207</sup> As already mentioned (paragraph 9), the UN has focused on the socio-economic aspect of the environment. This is clear from Principle 8, which further stipulates that “economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.”<sup>208</sup>

59. Subsequently, the ***Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)***<sup>209</sup> acknowledged the variety of flora and fauna “are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come.”<sup>210</sup> Similarly, the ***Convention on the Conservation of Migratory Species of Wild Animals***<sup>211</sup> recognized that “each generation of man holds resources of the earth for future generations and has an obligation to ensure that this legacy is conserved and, where utilized, is used wisely.”<sup>212</sup>

<sup>204</sup> *Convention on Wetlands of International Importance especially as Waterfowl Habitat* (2 February 1971, as amended in 1987), Preamble; Council of Europe Member States party to this Convention as of November 2020: Andorra, Belgium, Estonia, Finland, Germany, Ireland, Italy Luxembourg, the Netherlands, Portugal, Switzerland, Russian Federation and the United Kingdom.

<sup>205</sup> *Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration)* (16 June 1972)

<sup>206</sup> *Ibid.*, Principle 1

<sup>207</sup> *Ibid.*, Principle 2

<sup>208</sup> *Ibid.*, Principle 8

<sup>209</sup> *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)* (3 March 1973, as amended in 1983); All Council of Europe Member States are Party to this Convention as of November 2020.

<sup>210</sup> *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)* (3 March 1973, as amended in 1983), Preamble

<sup>211</sup> *Convention on the Conservation of Migratory Species of Wild Animals* (23 June 1979); All Council of Europe Member States are Party to this Convention as of November 2020, with the exception of Iceland, the Russian Federation, San Marino and Turkey.

<sup>212</sup> *Convention on the Conservation of Migratory Species of Wild Animals* (23 June 1979), Preamble

60. The **World Charter for Nature**, adopted by the UN General Assembly in 1982, proclaims five principles of conservation by which all human conduct affecting nature is to be guided and judged. It invites States to “conduct their activities in recognition of the supreme importance of protecting natural systems, maintaining the balance and quality of nature and conserving natural resources, in the interests of present and future generations.”<sup>213</sup>

61. In 1983, the UN decided to establish the World Commission on Environment and Development (WCED)<sup>214</sup>, also known as the Brundtland Commission. The work of the Commission resulted in a report (1987) called ‘Our Common Future’ with an annex containing a **Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development** (WCED Legal Principles).<sup>215</sup> These principles, *inter alia*, provide that “States shall conserve and use the environment and natural resources for the benefit of present and future generations,”<sup>216</sup> and recognise that “all human beings have the fundamental right to an environment adequate for their health and well-being”<sup>217</sup> (see Appendix 1).

62. Treaties such as the **Convention on Long-range Transboundary Air Pollution** of 1979,<sup>218</sup> the **Convention on Environmental Impact Assessment in Transboundary Context** (Espoo Convention) of 1991<sup>219</sup> and the **Convention on the Protection and Use of Transboundary Watercourses and International Lakes** (Water Convention) of 1992,<sup>220</sup> address the importance of collective action against the global effect of environmental degradation by requiring States to take all effective measures to ensure their activities do not cause adverse transboundary environmental impact which, *inter alia*,

<sup>213</sup> UN General Assembly, ‘World Charter for Nature’ (9 November 1982), UN Doc. A/RES/37/7, Annex

<sup>214</sup> The UN General Assembly “Consider[ed] that the Special Commission should make available a report on environment and the global problematique to the year 2000 and beyond, including proposed strategies for sustainable development.” Later, the Commission adopted its own name (‘World Commission on Environment and Development’). See: UN General Assembly Resolution 38/161 (19 December 1983), UN Doc A/RES/38/161, para. 10

<sup>215</sup> United Nations, ‘Report of the World Commission on Environment and Development: Our Common Future’ (Brundtland Report) (1987), p. 286, Annex 1, download available at: <<http://www.environmentandsociety.org/mml/un-world-commission-environment-and-development-ed-report-world-commission-environment-and>>

<sup>216</sup> *Ibid.*, Principle 2

<sup>217</sup> *Ibid.*, Principle 1

<sup>218</sup> *Convention on long-range transboundary air pollution* (1979), UNTS vol. 1302; The majority of the Council of Europe Member States are Party to this Convention as of December 2020, with the exception of Andorra and San Marino (signatory)

<sup>219</sup> *Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)* (1991), UNTS vol. 1989; The majority of the Council of Europe Member States are Party to this Convention as of November 2020, with the exception of Andorra, Georgia, Iceland (signatory), Monaco, the Russian Federation (signatory), San Marino and Turkey.

<sup>220</sup> *Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention)* (1992, as amended 2003) UNTS. Vol. 1936; The majority of the Council of Europe Member States are Party to this Convention as of November 2020, with the exception of Andorra, Armenia, Cyprus, Georgia, Malta, Monaco, San Marino, Turkey and the United Kingdom (signatory).



endangers ecosystems, living resources, human health and safety.<sup>221</sup> Additional to the Water Convention is the **Protocol on Water and Health**,<sup>222</sup> which emphasizes that water is an essential part to human life, and its quantity and quality have to be of a sufficient level to meet human needs, both for health as well as for sustainable development.<sup>223</sup> States Parties must therefore improve and protect (transboundary) water ecosystems by reducing water-related diseases, which are, amongst other things, caused by negative environmental impacts stemming from their activities.<sup>224</sup>

63. At the UN Conference on Environment and Development (Earth Summit) held in Rio de Janeiro in 1992, **Agenda 21**<sup>225</sup> and the **Rio Declaration on Environment and Development**<sup>226</sup> were adopted. Agenda 21 “reflects a global consensus and political commitment at the highest level on development and environmental cooperation”<sup>227</sup>; a non-binding plan of action to be taken on globally, nationally and locally by governments, organizations and individuals. In turn, the Rio Declaration comprises of 27 principles which intended to create “new levels of cooperation among States, key sectors of societies and people,”<sup>228</sup> and guide them to “protect the integrity of the global environmental and developmental system.”<sup>229</sup> Amongst other things, the Rio Declaration affirmed that human beings “are entitled to a healthy and productive life in harmony with nature.”<sup>230</sup> At the Earth Summit, the **United Nations Framework Convention on Climate Change** (UNFCCC)<sup>231</sup> was opened for signature. The instrument acknowledges that the “warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind,”<sup>232</sup>

---

<sup>221</sup> *Convention on long-range transboundary air pollution* (1979), UNTS vol. 1302, Arts. 1(a), 2; *Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)* (1991), UNTS vol. 1989, Arts. 1(vii), 2(1), 2(2); *Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention)* (1992, as amended 2003) UNTS. Vol. 1936, Arts. 1(2), 2

<sup>222</sup> *Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes* (1999), UNTS vol. 2331; Council of Europe Member States that have ratified the Protocol on Water and Health as of November 2020: Albania, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, Montenegro, the Netherlands, Norway, Portugal, Republic of Moldova, Romania, the Russian Federation, Serbia, Slovak Republic, Spain, Switzerland and Ukraine.

Council of Europe Member States that have signed but not ratified the Protocol on Water and Health as of November 2020: Armenia, Bulgaria, Cyprus, Denmark, Georgia, Iceland, Italy, Malta, Monaco, Poland, Slovenia, Sweden and the United Kingdom.

<sup>223</sup> *Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes* (1999), UNTS vol. 2331, Art. 1

<sup>224</sup> *Ibid.*, Art. 2(7)

<sup>225</sup> United Nations, ‘Report of the United Nations Conference on Environment and Development’ (Rio de Janeiro, 3-14 June 1992), UN Doc. A/CONF/151/26/Rev.1 (Vol.I), Annex II ‘Agenda 21’, p. 9

<sup>226</sup> *Ibid.*, Annex I ‘Rio Declaration on Environment and Development’, p. 3

<sup>227</sup> *Ibid.*, Annex II ‘Agenda 21’, Chapter 1, para. 1.3

<sup>228</sup> *Ibid.*, Annex I ‘Rio Declaration on Environment and Development’, p. 3, Preamble

<sup>229</sup> *Ibid.*

<sup>230</sup> *Ibid.*, Principle 1

<sup>231</sup> *United Nations Framework Convention on Climate Change* (UNFCCC) (1992), UNTS vol. 1771; All Council of Europe States Parties are Party to this Convention as of November 2020.

<sup>232</sup> *United Nations Framework Convention on Climate Change* (UNFCCC) (1992), UNTS vol. 1771, Preamble

and provides an overall framework for intergovernmental efforts to tackle the challenges of climate change. Also opened for signature at the Earth Summit was the **Convention on Biological Diversity**.<sup>233</sup> This Convention recognised that the world's ecosystems are fundamental to current and future generations of humanity, as their economic as well as social development depends on it,<sup>234</sup> and strives for “the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing.”<sup>235</sup>

64. The **UN Convention to Combat Desertification** (UNCCD),<sup>236</sup> which was established in 1994, linked environment and development to sustainable land management. With the aim to protect the most vulnerable ecosystems in dry areas and the communities and livelihoods that depend thereon, the Convention attempts to “combat desertification and mitigate the effects of drought,”<sup>237</sup> by creating strategies that focus “on improved productivity of land, and the rehabilitation, conservation and sustainable management of land and water resources.”<sup>238</sup> Although the Convention gives priority to African regions,<sup>239</sup> Europe is also increasingly affected by desertification.<sup>240</sup> Accordingly, in line with the UNCCD, (European) States which declare themselves as affected by desertification<sup>241</sup> should implement national action programmes in cooperation with local communities and land users.<sup>242</sup> Additionally, at regional level, States must cooperate to implement joint programmes for “transboundary natural resources, scientific and *technical cooperation, and strengthening of relevant institutions.*”<sup>243</sup> Of the current five focus regions under the UNCCD, two comprise Europe: the Northern Mediterranean<sup>244</sup> and Central and Eastern Europe.<sup>245</sup> The regional action plans, although particularly tailored to the issues arising

<sup>233</sup> *Convention on Biological Diversity* (5 June 1992), 1760 UNTS 69; All Council of Europe Member States are Party to this Convention as of November 2020.

<sup>234</sup> *Convention of Biological Diversity*, ‘History of the Convention’ (last updated: 16 October 2020) <<https://www.cbd.int/history/>> accessed at 21 October 2020

<sup>235</sup> *Convention on Biological Diversity* (5 June 1992), 1760 UNTS 69, Art. 1

<sup>236</sup> *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa* (14 October 1994), UNTS vol. 1954; All Council of Europe Member States are Party to this Convention as of November 2020.

<sup>237</sup> *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa* (14 October 1994), UNTS vol. 1954, Art. 2(1)

<sup>238</sup> *Ibid.*, Art. 2(2)

<sup>239</sup> *Ibid.*, Art. 7

<sup>240</sup> European Court of Auditors, ‘Combating desertification in the EU: a growing threat in need of more action’ (2018) Special Report No. 33, p. 7, para. 1

<sup>241</sup> *Ibid.*, p. 17, para. 12

<sup>242</sup> *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa* (14 October 1994), UNTS vol. 1954, art. 10

<sup>243</sup> *Ibid.*, Art. 11

<sup>244</sup> The Council of Europe Member States part of the Northern Mediterranean regional implementation actions include Albania, Croatia, Cyprus, Greece, Hungary, Italy, Malta, Portugal, Slovenia, Spain and Turkey.

<sup>245</sup> The Council of Europe Member States part of the Central and Eastern Europe regional implementation actions include Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Georgia, Latvia, Republic of Moldova, Montenegro, Republic of North Macedonia, Romania, Russian Federation, Serbia, Slovakia and Ukraine.

within those separate regions, include, *inter alia*, the aligning of national implementation plans and strengthening of regional policies.<sup>246</sup>

65. The **Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters** (Aarhus Convention)<sup>247</sup> is the only legally binding international agreement that makes reference to a substantive right to a healthy environment in an operative provision.<sup>248</sup> It provides “the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.”<sup>249</sup> However, the scope of the Aarhus Convention is the guarantee of procedural rights, and not the promulgation of the right to a healthy environment as such. Accordingly, it requires governments to provide access to information on environmental issues, public participation in decision making and access to justice in environmental matters.<sup>250</sup> To enhance the protection of the Convention, the **Protocol on Pollutant Release and Transfer Registers** of 2003<sup>251</sup> recognized that “pollutant release and transfer registers provide an important mechanism to increase corporate accountability, reduce pollution and promote sustainable development,”<sup>252</sup> and has as its objective “to enhance public access to information through the establishment of coherent, integrated, nationwide pollutant release and transfer registers [...] which could facilitate public participation in environmental decision-making as well as contribute to the prevention and reduction of the pollution of the environment.”<sup>253</sup> Additionally, the **Almaty Guidelines** were adopted in 2005 to “provide general guidance to Parties on promoting the application of the principles of the Convention in international forums in matters relating to the environment.”<sup>254</sup>

---

<sup>246</sup> UN Convention to Combat Desertification, ‘Addressing Land Degradation and Drought in the Northern Mediterranean’ *Annex IV: Northern Mediterranean*, <<https://www.unccd.int/convention/regions/annex-iv-northern-mediterranean>> accessed at 10 November 2020; UN Convention to Combat Desertification, ‘Combating Desertification in Central and Eastern Europe’ *Annex V: Central and Eastern Europe (CEE)*, <<https://www.unccd.int/conventionregions/annex-v-central-and-eastern-europe-cee>> accessed at 10 November 2020

<sup>247</sup> *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)* (25 June 1998); All Council of Europe Member States are Party to this Convention as of November 2020, with the exception of Andorra, Monaco (signatory), the Russian Federation, San Marino and Turkey.

<sup>248</sup> *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)* (25 June 1998), Art. 1

<sup>249</sup> *Ibid.*

<sup>250</sup> *Ibid.*

<sup>251</sup> *Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (2003), UNTS vol. 2626; All Council of Europe Member States are Party to this Protocol as of December 2020, with the exception of Andorra, Armenia (signatory), Azerbaijan, Bosnia and Herzegovina (signatory), Georgia (signatory), Greece (signatory), Iceland, Liechtenstein, Monaco, Russian Federation and Turkey

<sup>252</sup> *Ibid.*, Preamble

<sup>253</sup> *Ibid.*, Art. 1

<sup>254</sup> UN Economic and Social Council, Economic Commission for Europe, Report of the Second Meeting of the Parties ‘Promoting the Application of the Principles of the Aarhus Convention in International Forums’ (adopted in Almaty, 25-27 May 2005), ECE/MP.PP/2005/2/Add.5, Annex I(1)

66. The **UN 2030 Agenda for Sustainable Development**, was adopted by the General Assembly in 2015, and intended to be achieved by the year 2030.<sup>255</sup> The 2030 Agenda “is grounded in the Universal Declaration of Human Rights, international human rights treaties, the Millennium Declaration and the 2005 World Summit Outcome Document[, and] is informed by other instruments such as the Declaration on the Right to Development.”<sup>256</sup> Moreover, “the outcomes of all major UN conferences and summits [...] have helped shape the new Agenda. These include the Rio Declaration on Environment and Development; the World Summit on Sustainable Development; the World Summit for Social Development; the Programme of Action of the International Conference on Population and Development, the Beijing Platform for Action; [...] the United Nations Conference on Sustainable Development (“Rio+ 20”)”<sup>257</sup> and their follow-up conferences. The Agenda includes 17 interconnected Sustainable Development Goals (SDGs) set as a blueprint to achieve a better and more sustainable future for all. In particular of concern for the environment are SDG 3 (“Good health and well-being”), SDG 6 (“Clean water and sanitation”), SDG 7 (“Affordable and clean energy”), SDG 11 (“Sustainable cities and communities”), SDG 12 (“Responsible consumption and production”), SDG 13 (“Climate action”), SDG 14 (“Life below water”), and SDG 15 (“Life on land”).<sup>258</sup>

67. In 2016, under UNFCCC, the **Paris Agreement**<sup>259</sup> entered into force. This instrument clearly recognises the correlation of human rights and the environment. It mentions, *inter alia*, that climate change measures should aim at sustainable development, the eradication of poverty, and protect vulnerable food productions from climate change impacts. Moreover, this agreement acknowledges that “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.”<sup>260</sup>

68. On 10 May 2018, the UN General Assembly adopted the **“Towards a Global Pact for the Environment” Resolution**,<sup>261</sup> in which it established an ad hoc open-ended working group which would evaluate a technical and evidence-based report submitted by

---

<sup>255</sup> UN General Assembly, ‘Transforming our world: the 2030 Agenda for Sustainable Development’ (21 October 2015) UN Doc. A/RES/70/1

<sup>256</sup> *Ibid.*, para. 10

<sup>257</sup> *Ibid.*, para. 11

<sup>258</sup> *Ibid.*, p. 14

<sup>259</sup> *Paris Agreement* (2015); All Council of Europe Member States are Party to this Convention as of November 2020, with the exception of Turkey (signatory).

<sup>260</sup> *Paris Agreement* (2015), Preamble

<sup>261</sup> UN General Assembly Resolution, ‘Towards a Global Pact for the Environment’ (adopted on 10 May 2018), UN Doc. A/RES/72/277

the UN Secretary-General, and opened discussions with regards to the gaps within international environmental law and environment -related instruments.<sup>262</sup> Based on the working group its sessions, and if deemed necessary, the working group was additionally mandated to make recommendations to adopt a legally binding international instrument ('a global pact', see Appendix 1).<sup>263</sup> In 2019, the working group held a total of three sessions, of which the third and final comprised the adoption of the recommendations for the UN General Assembly. Although the working group emphasized the importance of "the protection of the environment for present and future generations,"<sup>264</sup> and the continuance of the strengthening of existing international environmental instruments, obligations and commitments,<sup>265</sup> member States remained cautious, and eventually opted for a simple political declaration instead of the adoption of a binding instrument.<sup>266</sup> The working group recommended therefore, that the said declaration could be considered in and prepared for the fifth session of the United Nations Environment Assembly in February 2021,<sup>267</sup> which was endorsed by the UN General Assembly.<sup>268</sup>

### General human rights instruments with an environmental dimension

69. Several international treaties have recognised the protection of the environment as part of the application of general human rights. Examples hereof include the ***International Covenant on Economic Social and Cultural Rights*** (ICESCR),<sup>269</sup> which recognises that "the improvement of all aspects of environmental [...] hygiene"<sup>270</sup> forms part of the right to health. In a general comment,<sup>271</sup> the Committee on Economic, Social and Cultural Rights repeated the Constitution of the World Health Organization (WHO): "health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity,"<sup>272</sup> which includes the insurance of a "healthy environment."<sup>273</sup> In connection hereto, the Committee recognised the right to water and therewith the obligation on State parties to "ensure that natural water resources are protected from contamination by harmful

---

<sup>262</sup> *Ibid.*, paras. 1, 2

<sup>263</sup> *Ibid.*, para. 2

<sup>264</sup> UN General Assembly, 'Report of the ad hoc open-ended working group established pursuant to General Assembly resolution 72/277' (13 June 2019), UN Doc. A/AC.289/6/Rev.2, p. 9, F "Recommendations", para. F.1. (a)

<sup>265</sup> *Ibid.*, p. 9, F "Recommendations", paras. F.1. (b), (c), (d)

<sup>266</sup> *Ibid.*, p. 11, F "Recommendations", F.3. 55 (b)

<sup>267</sup> *Ibid.*

<sup>268</sup> UN General Assembly Resolution 73/333 (5 September 2019), UN Doc. A/RES/73/333, para. 1

<sup>269</sup> *International Covenant on Economic, Social and Cultural Rights* (16 December 1966), UN Doc. A/6316, 993 UNTS 3; All Council of Europe Member States are Party to this Convention as of November 2020.

<sup>270</sup> *International Covenant on Economic, Social and Cultural Rights* (16 December 1966), UN Doc. A/6316, 993 UNTS 3, Art. 12(b)

<sup>271</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)* (11 August 2000), E/C.12/2000/4

<sup>272</sup> *Constitution of the World Health Organization* (1946), Preamble

<sup>273</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)* (11 August 2000), E/C.12/2000/4, para. 4

substances and pathogenic microbes.”<sup>274</sup> Additionally, in light of the right to adequate food, the Committee emphasized the dependency of food safety on the effective implementation of protective environmental measures surrounding foodstuffs.<sup>275</sup>

70. Similarly, the Human Rights Committee published a general comment with respect to Article 6 (right to life) of the ***International Covenant on Civil and Political Rights*** (ICCPR)<sup>276</sup> in 2019. Here, amongst other things, it specifically acknowledged that the current environmental crisis constitutes as “some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”<sup>277</sup> Consequently, it emphasized that “the obligations of States parties under international environmental law should thus inform the content of Article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.”<sup>278</sup> Particularly taking into account the Rio Declaration, the Human Rights Committee noted that “States parties should [...] ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach.”<sup>279</sup>

71. Moreover, the ***Convention on the Rights of the Child***<sup>280</sup> reiterates that the natural environment is fundamental for “the growth and well-being of all its members and particularly children,”<sup>281</sup> and that this should therefore be adequately protected.<sup>282</sup> This instrument highlights the importance of member States to “[take] into consideration the

<sup>274</sup> UN CESCR, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)* (20 January 2003), E/C.12/2002/11, para. 8

<sup>275</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11)* (12 May 1999), E/C.12/1999/5, para. 10

<sup>276</sup> *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); All Council of Europe Member States are Party to this Convention as of February 2021.

<sup>277</sup> UN Human Rights Committee, *International Covenant on Civil and Political Rights, General comment No. 36 Article 6: right to life* (3 September 2019), CCPR/C/GC/36, para. 62

<sup>278</sup> *Ibid.*

<sup>279</sup> *Ibid.*

<sup>280</sup> *Convention on the Rights of the Child* (20 November 1989), 1577 UNTS 3; All Council of Europe Member States are Party to this Convention as of November 2020.

<sup>281</sup> *Convention on the Rights of the Child* (20 November 1989), 1577 UNTS 3, Preamble

<sup>282</sup> *Ibid.*

dangers and risks of environmental pollution”<sup>283</sup> and the “advantages of [...] environmental sanitation”<sup>284</sup> to ensure that children enjoy the highest attainable standard of health. Accordingly, the Committee on the Rights of the Child confirms that “States should take measures to address the dangers and risks that local environmental pollution poses to children’s health in all settings,”<sup>285</sup> and calls for national efforts to tackle climate change.<sup>286</sup> The Convention also emphasizes that States should direct education towards “the development of respect for the natural environment.”<sup>287</sup> Moreover, the Committee stated that “children come to understand, appreciate and care for the natural world through exposure, self-directed play and exploration with adults who communicate its wonder and significance. Memories of childhood play and leisure in nature strengthen resources with which to cope with stress, inspire a sense of spiritual wonder and encourage stewardship for the earth.”<sup>288</sup> Therefore, it is of importance that States ensure access for children “to parks, gardens, forests, beaches and other natural areas.”<sup>289</sup>

72. Indigenous people are considered to have a “distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas.”<sup>290</sup> Accordingly, the **Convention Concerning Indigenous and Tribal People**<sup>291</sup> and the **United Nations Declaration on the Rights of Indigenous Peoples**<sup>292</sup> lay down the requirement of States to legally recognize and protect the natural resources located on these lands.<sup>293</sup> Additionally, the Convention on Biological Diversity (mentioned in paragraph 63), determines that States Parties must “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.”<sup>294</sup> Indigenous rights can be invoked by individual members of such group, as well

---

<sup>283</sup> *Ibid.*, Art. 24(2)(c)

<sup>284</sup> *Ibid.*, Art. 24(2)(e)

<sup>285</sup> UN Committee on the Rights of the Child, *General Comment No. 15: on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)* (17 April 2013), CRC/C/GC/15, para. 49

<sup>286</sup> *Ibid.*, para. 50

<sup>287</sup> *Convention on the Rights of the Child* (20 November 1989), 1577 UNTS 3, Art. 29(1)(e)

<sup>288</sup> UN Committee on the Rights of the Child, *General Comment No. 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)* (2013), CRC/C/GC/17, para. 40

<sup>289</sup> *Ibid.*

<sup>290</sup> UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples* (13 September 2007), UNGA Res. A/RES/61/295, Art. 25

<sup>291</sup> International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention* (27 June 1989), No. 169; As of November 2020, the only Council of Europe Member States Party to this Convention are Denmark, Luxembourg, the Netherlands, Norway and Spain. Nonetheless, as seen above, the Convention on Biological Diversity is uniformly ratified by all Members, which contains a provision on the protection of indigenous people.

<sup>292</sup> UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples* (13 September 2007), UNGA Res. A/RES/61/295

<sup>293</sup> International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention* (27 June 1989), No. 169, Arts. 14, 15(1); UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples* (13 September 2007), UNGA Res. A/RES/61/295, Art. 26

<sup>294</sup> *Convention on Biological Diversity* (5 June 1992), 1760 UNTS 69, Art. 8(j)

as by the indigenous group as a whole ('collective/group rights').<sup>295</sup> Indeed, as indigenous rights stem from the historical continuation of a society on a certain territory, often already existent prior to invasion or colonization,<sup>296</sup> this right does not derive from individual ownership, but from sustained community presence. By the same token, the assurance of such right is thus of "fundamental importance for [the group its] *collective* physical and cultural survival *as peoples*"<sup>297</sup> (emphasis added), and mere recognition of individual rights would therefore not provide enough protection for their overall existence.

73. In 2011, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, annexed the ***Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*** to his final report to the Human Rights Council,<sup>298</sup> which endorsed those principles in a resolution. This document is remarkable, as it does not only mention the vertical obligations of States to protect human rights from abuse by third parties,<sup>299</sup> but also introduces the responsibility of private corporations to respect (environmental) human rights horizontally.<sup>300</sup> This means, *inter alia*, that States have to "enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps,"<sup>301</sup> including environmental laws.<sup>302</sup> Businesses themselves, "should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved."<sup>303</sup> This includes, *inter alia*, that they carry out human rights due diligence.<sup>304</sup> This process comprises of the identification and assessment of actual or potential adverse human rights impacts caused throughout the entirety of the supply chain, including environmental impact assessments, with human rights as a reference point.<sup>305</sup> In a Declaration in 2014, the Committee of Ministers recognized the UN

<sup>295</sup> UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples* (13 September 2007), UNGA Res. A/RES/61/295, Art. 1

<sup>296</sup> *African Commission on Human and Peoples' Rights v. Republic of Kenya* (Judgment), (26 May 2017) Application no. 006/2012, para. 106

<sup>297</sup> *Advisory Opinion of The African Commission on Human and Peoples' Rights on The United Nations Declaration on The Rights of Indigenous Peoples* (Adopted May 2007), p. 4; *African Commission on Human and Peoples' Rights v. Republic of Kenya* (Judgment), (26 May 2017) Application no. 006/2012, para. 105

<sup>298</sup> UN Human Rights Council, 'Report of the Special Representative of the Secretary- General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (21 March 2011), UN Doc. A/HRC/17/31, p. 6, Annex

<sup>299</sup> Office of the High Commissioner for Human Rights, 'Guiding Principles for Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011), Principles 1 – 10, download available at: <<https://www.unglobalcompact.org/library/2>>

<sup>300</sup> *Ibid.*, Principles 11 – 24

<sup>301</sup> *Ibid.*, p. 4, Principle 3(a)

<sup>302</sup> *Ibid.*, p. 5

<sup>303</sup> *Ibid.*, p. 13, Principle 11

<sup>304</sup> *Ibid.*, p. 17, Principle 17

<sup>305</sup> *Ibid.*, p. 19, 20, Principle 18



Guiding Principles as “the current globally agreed baseline for its own work in the field of business and human rights.”<sup>306</sup> Subsequently, in 2016, the Committee of Ministers adopted Recommendation CM/Rec(2016)3 addressed to member States on human rights and business to ensure that member States comply with the UN Guiding Principles on Business and Human Rights.<sup>307</sup>

74. In his report from 2018, the Special Rapporteur on human rights and the environment, John H. Knox, set up **Framework Principles on Human Rights and the Environment**,<sup>308</sup> which are derived from “the application of existing human rights obligations in environmental context”<sup>309</sup> and thus based on existing work of the human rights system. Those principles highlight the importance of the interdependence of human rights and environment. Amongst requiring States to “ensure a safe, clean healthy and sustainable environment in order to respect, protect and fulfil human rights,”<sup>310</sup> provide effective protection against discrimination, education and awareness, access to information, participation in decision-making and effective remedies, the framework principles, for example, also address the need for States to “ensure the effective enforcement of their environmental standards against public and private actors”<sup>311</sup> by “preventing, investigating, punishing and redressing violations of the standards by private actors as well as governmental authorities.”<sup>312</sup> (see Appendix 1).

### C. European Union

75. The European Union (‘EU’) environment policy is based on Articles 11 and 191-193 of the Treaty on Functioning of the European Union. Therefore, EU environmental law covers issues ranging from biodiversity to water, air pollution, noise, dangerous substances, genetically modified organisms, waste, nuclear safety, as well as horizontal measures on environmental assessments, integrated pollution prevention and control, integrated product policy and environmental liability. This means that about 70-80% of environmental law implemented in the member States is of EU origin.<sup>313</sup>

<sup>306</sup> Declaration of the Committee of Ministers on the UN Guiding Principles on business and human rights (Adopted by the Committee of Ministers on 16 April 2014 at the 1197th meeting of the Ministers’ Deputies), para. 37, <[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805c6ee3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c6ee3)> accessed at 14 January 2021

<sup>307</sup> Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business (Adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers’ Deputies); which is currently being reviewed on its implementation, see: CDDH, 93th Meeting 14–16 December 2020, Report CDDH(2020)R93 (27 January 2021), p. 16, para. 55

<sup>308</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>309</sup> *Ibid.*, p. 3, para. 8

<sup>310</sup> *Ibid.*, p. 7, Framework principle 1

<sup>311</sup> *Ibid.*, p. 15, Framework principle 12

<sup>312</sup> *Ibid.*, p. 15, Framework principle 12, para. 34

<sup>313</sup> Marin-Duran, G & Morgera, E 2013 ‘Commentary on Article 37 of the EU Charter of Fundamental Rights: Environmental Protection’ Europa Working Papers, no. 2013/02, Europa Working Paper. <https://doi.org/10.2139/ssrn.2267402>

76. Under Article 191, combating climate change is an explicit objective of EU environmental policy. Thus, the EU has implemented and formulated climate policies and strategies to tackle climate change. It is committed to ensuring the successful implementation of the Paris Agreement and implementing the EU's Emissions Trading System (EU ETS).

77. Another objective of the EU is sustainable development, which is mentioned in Article 3 of the Treaty on European Union and commits to a “high level of protection and improvement of the quality of the environment”.

78. The ***EU Charter of Fundamental Rights*** includes in Article 37 (Environmental protection) the principle 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.” While the Charter lays down the duties of public authorities in relation to environmental integration in policymaking and implementation, it does not, however, sanction any individually justiciable right to environmental protection, or to an environment of any particular quality.

79. In 2019, the European Commission communicated the ***European Green Deal*** with the other bodies of the European Union.<sup>314</sup> The European Green Deal is an ambitious, mainly climate focussed roadmap, aimed at making the EU's economy more sustainable, in line with the UN Sustainable Development Goals.<sup>315</sup> So far, several non-binding efforts have been initiated under its wing, including, *inter alia*, a European Industrial Strategy, a Circular Economy Action Plan and Climate and Biodiversity strategies.<sup>316</sup>

#### **D. Short chapter recap**

80. This chapter has identified several of the regional and international instruments, standards and norms that recognize the connection between human rights and the environment. Those included are roughly distinguished into two sections:

81. Firstly, environmental instruments that recognize a human dimension to environmental protection. Those instruments address particular issues related to the environmental crisis, such as, *e.g.*, climate change, loss of biological diversity and natural

---

<sup>314</sup> Commission communication COM(2019) 640 The European Green Deal

<sup>315</sup> *Ibid.*, p. 2, 3

<sup>316</sup> European Commission, ‘A European Green Deal Striving to be the first climate-neutral continent’ <[https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en#relatedlinks](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en#relatedlinks)> accessed at 4 November 2020

resources and desertification, and have recognized the importance of the conservation and protection of the environment as the foundation for continued human development and well-being of present and future generations.

82. Secondly, human rights instruments that recognize the importance of environmental protection for the better assurance human rights. Those instruments point out the need for States to “ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights,”<sup>317</sup> such as, *e.g.*, the right to health, the right to life, children’s rights and the rights of indigenous individuals and groups. Along with this comes the obligation to ensure that private parties do not violate human rights by causing environmental degradation.

---

<sup>317</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, p. 7, Framework principle 1

#### IV. APPROACHES AND GOOD AND PROMISING PRACTICES OF MEMBER STATES

83. Approaches and good and promising practices of member States, such as extracts from national constitutions, legislation, action plans or policies, as well as decisions of national courts, provide insight on the level of protection in the field of human rights and the environment that is currently provided at national levels and identifies common ground as basis for “mainstreaming the environmental dimension into human rights and pursue a rights-based approach to environmental protection at European level.”<sup>318</sup> Additionally, the ECtHR looks, amongst other things, at the experiences of member States to establish principles of the rule of law and democracy<sup>319</sup>: “the interpretation of the European Convention may legitimately be based on a common tradition of constitutional laws and a large measure of legal tradition common to the countries of the Council of Europe.”<sup>320</sup>

##### A. Constitutional protection of the environment

84. In a number of member States the environmental is expressly recognised and protected in the constitution,<sup>321</sup> not only as a duty of governmental authorities, but also as a right and sometimes duty, of the individual<sup>322</sup> (see Appendix 3).

85. Short of adopting a right-based formulation, other national constitutions do nonetheless recognise environmental protection as a constitutional value and obliges the State to protect the environment<sup>323</sup> (see Appendix 3). These constitutional obligations on the State to protect the environment have been considered as equivalent, in fact, to the recognition of an individual right, since the concerned persons can ask public authorities to respect it.<sup>324</sup>

<sup>318</sup> Final Declaration by the Georgian Presidency of the Committee of Ministers, Environmental Protection and Human Rights, High-Level Conference organised under the aegis of the Georgian Presidency of the Committee of Ministers (Strasbourg, 27 February 2020), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 12 April 2021

<sup>319</sup> C. Grabenwarter, ‘The European Convention on Human Rights: Inherent Constitutional Tendencies and the Role of the European Court of Human Rights’ (2014) *ELTE Law Journal*, p. 106

<sup>320</sup> Jacobs, White and Ovey, *The European Convention of Human Rights* (8<sup>th</sup> edition, Oxford University Press), p. 79

<sup>321</sup> See Appendix 3: Environmental protection is mentioned in majority of the national Constitutions of the Council of Europe member States. However, the explicit individual right to a healthy environment is particularly recognized by the Constitutions of Armenia, Azerbaijan, Belgium, Bulgaria, Czech Republic, Finland, France, Georgia, Hungary, Latvia, Montenegro, North Macedonia, Norway, Republic of Moldova, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Turkey and Ukraine.

<sup>322</sup> See Appendix 3: Particularly the Constitutions of Armenia, Azerbaijan, Croatia, Estonia, Finland, France, Georgia, Hungary, Montenegro, North Macedonia, Poland, Republic of Moldova, Russian Federation, Serbia, Slovak Republic, Spain and Turkey specify that besides the State, it is also individuals who carry responsibility to protect the environment.

<sup>323</sup> See Appendix 3: These include, for example, the Constitutions of Albania, Andorra, Croatia, Estonia, Germany, Greece, Lithuania, Luxembourg, Netherlands, Poland, Portugal, San Marino, Sweden and Switzerland.

<sup>324</sup> A. Kiss, ‘Environmental and Consumer Protection’ in S. Peers and A. Ward (eds.), *The EU Charter of Fundamental Rights* (Hart Publishing, 2004), p. 253

86. Although not all member States have enshrined the protection of the environment within their Constitutions,<sup>325</sup> the environment is often still protected through the national constitutional framework via other laws<sup>326</sup> and/or case law.<sup>327</sup> “To be sure, the presence or absence in national constitutions of a right to environment, or/and of a public duty to protect it, may be determined by several legal and other factors, and the exact implications ultimately depend on how national courts interpret and use existing constitutional provisions.”<sup>328</sup>

## **B. Cases before national courts**

87. Over the past years, an increasing number of cases invoking constitutional and Convention rights with respect to the environment have appeared before the national courts of member States. Member States, “in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto,”<sup>329</sup> and therefore “the Court may only deal with the matter after all domestic remedies have been exhausted.”<sup>330</sup> In securing the rights and freedoms defined in the Convention and the Protocols with respect to the environment, member States enjoy a wide margin of appreciation (a scope of discretion given to national authorities when determining the most appropriate measures to take in order to reach the legitimate aim sought),<sup>331</sup> as it is considered that, “through their democratic legitimization, the national

---

<sup>325</sup> See Appendix 3: States which do not specifically refer to the protection of the environment within their Constitutions are Austria, Bosnia and Herzegovina, Cyprus, Denmark, Iceland, Ireland, Italy, Liechtenstein, Malta, Monaco and the United Kingdom (the latter of which does not have a formal Constitution).

<sup>326</sup> For example, although Austria’s Constitution does not provide protection for the environment, it does prescribe that legislation and its implementation, including “measures to defend the environmental against dangerous stresses”, are of Federal concern (see Article 10(1)12 of the Austrian Constitution). Italy has a similar provision (see Article 117 of the Italian Constitution). Austria, on this basis, adopted several environmental regulations, and Italy has the Environmental Consolidated Act. The other member States of the Council of Europe, with or without environmental protection in the Constitution, adopted (additional) laws with respect to the protection of the environment. Amongst others, such legislation varies from general environmental protection acts to specified legislation on, for example, animal protection, different forms of pollution, air quality, forests, radiation, climate action, waste management and sustainability.; Marin-Duran & Morgera, ‘Commentary on Article 37 of the EU Charter of Fundamental Rights: Environmental Protection’ (2013), *Europa Working Papers* no. 2013/02, p. 10, download available at: <<https://doi.org/10.2139/ssrn.2267402>>

<sup>327</sup> “The Italian Constitutional Court, for instance, interpreted the right to health that is protected by the Italian Constitution as including the right to a healthy environment: Italian Constitutional Court judgment n. 5172 of 6 October 1976. In addition, the Italian Constitution has been amended so as to include an explicit competence for the State, which is shared with the regions, to protect the environment and ecosystems: Article 117 of the Italian Constitution, as amended by Constitutional Law No 3/2001.” See Marin-Duran & Morgera, ‘Commentary on Article 37 of the EU Charter of Fundamental Rights: Environmental Protection’ (2013), *Europa Working Papers* no. 2013/02, p. 10, footnote 52, download available at: <<https://doi.org/10.2139/ssrn.2267402>>

<sup>328</sup> Marin-Duran & Morgera, ‘Commentary on Article 37 of the EU Charter of Fundamental Rights: Environmental Protection’ (2013), *Europa Working Papers* no. 2013/02, p. 10, download available at: <<https://doi.org/10.2139/ssrn.2267402>>

<sup>329</sup> *Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms* (2013), CETS No. 213, Art. 1

<sup>330</sup> *European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)* (4 November 1950) ETS No. 5, Art. 35(1)

<sup>331</sup> See Natalia Kobylarz, ‘The European Court of Human Rights, an Underrated Forum for Environmental Litigation’ (2019), p. 115, in *Sustainable Management of Natural Resources Legal Instrument and Approaches* (eds. Helle Tegner

authorities are [...] in principle better placed than an international court to evaluate local needs and conditions.”<sup>332</sup> Therefore, when filing cases that refer to Convention rights, many applicants, particularly in climate cases, refer to other commitments the State has made, such as to the UNFCCC and Paris Agreement, which they propose indicates the context in which this margin of appreciation should be interpreted.<sup>333</sup> Although not always successful, the rise in cases before national Courts shows the increasing interest in and awareness of the connection between human rights and the environment and shows what kind of cases on national level may lead, eventually, to cases before the Court.

### The Urgenda Climate Case – Dutch Supreme Court

88. Currently the most famous case, and one which is referred to in the majority of the other national cases throughout the member States of the Council of Europe afterwards, is the Urgenda Climate Case. In 2015, the Dutch NGO Urgenda brought a case before a District Court on behalf of 886 Dutch citizens, seeking an order that would direct the Dutch State to significantly reduce the emission of greenhouse gasses. The District Court ruled in favour of Urgenda, deciding that the State “was ordered to reduce emissions by the end of 2020 by at least 25% compared to 1990.”<sup>334</sup> In 2018, this decision was confirmed by the Court of Appeal, and, in 2019, the Supreme Court again upheld this decision. Besides mentioning the UNFCCC, the Paris Agreement, and various European and Dutch climate policies, the main basis of the decision were Articles 2 and 8 of the ECHR, in accordance with the ECtHR’s interpretation of these articles.<sup>335</sup>

---

Anker, Birgitte Egelund Olsen) (Intersentia Ltd, 2018): “the Court affords national authorities - for example under Article 8 of the ECHR and Article 1 of Protocol No. 1 to the ECHR (right to property) in determining their best environmental policies and in choosing between different ways and means of meeting their international obligations. [...] Similarly, under the positive limb of Article 2 of the ECHR (right to life), the ECtHR has held that an impossible or disproportionate burden must not be imposed on the authorities without consideration being given, in particular, to the operational choices which they must make in terms of priorities and resources.”

<sup>332</sup> *Lekič v. Slovenia* (Judgment) (11 December 2018), ECHR Application no. 36480/07, para. 108

<sup>333</sup> *Paris Agreement* (2015), Art. 2(1)(a): “Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;”

“Nor should the margin of appreciation doctrine be read as allowing states broad discretion in the area of climate change mitigation. There is, in this regard, a critical difference between the issues which arose in cases such as *Hatton v UK*, concerning the regulation of noise pollution, and that of climate change. In *Hatton*, the margin of appreciation was relied upon to determine the extent of the interference to the rights protected by Article 8 which was permissible in that case, having regard to the competing economic interests at stake. If, however, in the case of climate change, it is accepted that the ECHR must be read in light of the temperature target prescribed by the Paris Agreement, then the interference with Article 8 rights that will result from global warming exceeding that target cannot ever be deemed “necessary in a democratic society”.” See, Clark, *et al.*, ‘Climate change and the European Court of Human Rights: The Portuguese Youth Case’ (6 October 2020) *EJIL: Talk!*, <<https://www.ejiltalk.org/climate-change-and-the-european-court-of-human-rights-the-portuguese-youth-case/>> accessed at 8 February 2021

<sup>334</sup> *The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v. Stichting Urgenda* (Judgment, Supreme Court of the Netherlands) (20 December 2019), Case No. 19/00135 (English), p. 2, Summary of the Decision

<sup>335</sup> *Ibid.*, p. 5

89. The State argued that due to the global nature of climate change, and as such its cause and its scope, the threat of climate change was not specific enough to generate positive obligations under Articles 2 and 8 of the ECHR.<sup>336</sup> The Supreme Court recalled, based on the existing case law of the ECtHR, that for Articles 2 and 8 to give rise to a positive obligation to take appropriate measures to protect individuals from serious environmental damage, if there exists a genuine risk that threatens those individuals, their lives, well-being or enjoyment of the home.<sup>337</sup> In analysing if the threshold for positive obligations was met, the Supreme Court took into account scientific evidence which showed the devastating effects of climate change at the cost of human lives.<sup>338</sup> Considering the consensus by climate science that the warming of the earth (caused by the emissions of greenhouse gasses in the atmosphere) must remain under 2 degrees Celsius in order for it not to become seriously dangerous, and considering that the current emissions of greenhouse gasses in the Netherlands is above the maximum international standards agreed to ensure this,<sup>339</sup> while additionally noting that “if the emissions gap is not bridged by 2030, achieving the target of a maximum warming of 2°C is extremely unlikely”<sup>340</sup>; the Supreme Court could only come to the conclusion that there is a real and imminent risk “that the lives and welfare of Dutch residents could be seriously jeopardised,”<sup>341</sup> particularly since sea-level rise could render the territory inhabitable.

90. Considering that the Netherlands is party to the UNFCCC and the Paris Agreement, which are “based on the idea that climate change is a global problem that needs to be solved globally”<sup>342</sup> and state that “each state has an obligation to take the necessary measures in accordance with its specific responsibilities and possibilities,”<sup>343</sup> “the Supreme Court finds that Articles 2 and 8 ECHR relating to the risk of climate change should be interpreted in such a way that these provisions oblige the contracting states to do ‘their part’ to counter that danger,”<sup>344</sup> particularly since there is a serious risk that dangerous climate change will occur in the Netherlands.

### Swiss Senior Women for Climate Protection Case – Swiss Supreme Court

91. In 2016, the Union of Swiss Senior Women for Climate Protection filed a petition against the Swiss government stating that the government had failed its obligations under

---

<sup>336</sup> *Ibid.*, p. 19, para. 5.1

<sup>337</sup> *Ibid.*, p. 19, 20, paras. 5.2.2, 5.2.3

<sup>338</sup> *Ibid.*, p. 18, para. 4.2

<sup>339</sup> *Ibid.*, p. 18, paras. 4.2, 4.3

<sup>340</sup> *Ibid.*, p. 19, para. 4.6

<sup>341</sup> *Ibid.*, p. 22, 23, para. 5.6.2

<sup>342</sup> *Ibid.*, p. 23, para. 5.7.2

<sup>343</sup> *Ibid.*, p. 24 para. 5.7.3

<sup>344</sup> *Ibid.*, p. 25, para. 5.8

the Swiss Constitution and Article 2 and 8 of the ECHR, “by not steering Switzerland onto an emissions reduction trajectory consistent with the goal of keeping global temperatures below 2°C above pre-industrial levels”<sup>345</sup> (at least 25% below 1990 levels by 2020 and at least 50% below 1990 levels by 2050).<sup>346</sup> Particularly since the applicants (senior women), “are members of a “most vulnerable group” with regard to the effects of climate change. The claim is based on the evidence of increased health risk for older women whose life and health are more severely impacted by periods of hot weather than the health of the rest of the population.”<sup>347</sup>

92. In April 2017, the Swiss government dismissed the claim on the basis that the applicants’ request to a reduction of emissions had a general purpose. The government stated that the goal of the petition was to reduce global CO2 submissions, and not only those in the applicants’ immediate surroundings – *ergo*, the petition lacked an infringement of specific individual rights.<sup>348</sup> The case was dismissed on similar grounds before the Swiss Federal Administrative Court in November 2018 and before the Supreme Court in May 2020.

93. Consequently, the Union of Swiss Senior Women for Climate Protection filed a case before the ECtHR in November 2020, in where they argue firstly that there is “a violation of their rights to effective access to a court [as the] respondent’s domestic courts did not assess the dispute or did so arbitrarily and incidentally”<sup>349</sup> (Article 6), secondly, that Switzerland is “continuously violating Applicants’ rights under Art. 2 and 8 ECHR by failing to comply with its positive obligation to put in place all necessary measures to protect the Applicants effectively, i.e. to do everything in its power to do its share to prevent a global temperature increase of more than 1.5°C,”<sup>350</sup> and thirdly that their “right to an effective remedy was violated since no national authority examined the substance of their complaint”<sup>351</sup> (Article 13).

---

<sup>345</sup> Climate Change Litigation Databases, ‘Union of Swiss Senior Women for Climate Protection v. Swiss Federal Council and Others’ <<http://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-parliament/>> accessed at 9 February 2021

<sup>346</sup> *Ibid.*

<sup>347</sup> *Verein KlimaSeniorinnen Schweiz, et al. v. Federal Council, Federal Department of the Environment, Transport, Energy and Communications (DETEC), Federal Office for the Environment (FOEN), Swiss Federal Office for Energy (SFOE)* (Requests for legal remedy) (25 October 2016), Summary (English), Statement of Grounds, 1(1)

<sup>348</sup> Unofficial translation of the juridical relevant part of the order the KlimaSeniorinnen received the 26th of April 2017 by the Federal Department of the Environment, Transport, Energy and Communications, paras. 1.2, 1.3; Climate Change Litigation Databases, ‘Union of Swiss Senior Women for Climate Protection v. Swiss Federal Council and Others’ <<http://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-parliament/>> accessed at 9 February 2021

<sup>349</sup> *Klimaseniorinnen*, Application to the European Court of Human Rights (26 November 2020), Application form, F, download available at: <<http://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-parliament/>>

<sup>350</sup> *Ibid.*

<sup>351</sup> *Ibid.*



### Climate Case Ireland – Irish Supreme Court

94. In January 2019, the NGO Friends of the Irish Environment (FIE) filed a case before the High Court claiming that the National Mitigation Plan (2017), which was published by the government under the Climate Action and Low Carbon Development Act (2015),<sup>352</sup> was unconstitutional, and violated national law, EU law and Articles 2 and 8 of the ECHR.<sup>353</sup> This as the Plan does not take enough steps to reduce emissions on the short term, failing to meet National Transitional Objective (emission reduction goal) by 2050 as set by the 2015 Act.<sup>354</sup> As such, the “failure to adopt any or any adequate means to reduce greenhouse gas emissions as required to contribute to meeting the objectives of the UNFCCC, the Kyoto Protocol and the Paris Agreement will endanger the applicants rights, the rights of the applicant’s members and the population at large.”<sup>355</sup> In September 2019 however, the High Court decided against the claims made by FIE, stating “that the government appropriately exercised policy making discretion afforded by the Act, explaining that the current Plan is only an initial step in achieving targets for transitioning to a low-carbon, climate resilient, and environmentally sustainable economy by 2050, and will be subject to review and revision.”<sup>356</sup> Additionally, although the High Court accepted the FIE had the *locus standi* to make right-based claims, it found that the Plan fell within the realm of the margin of appreciation States have with respect to the ECHR.<sup>357</sup>

95. In November 2019, FIE filed for appeal which was taken up by the Supreme Court in February 2020 since “there are “exceptional circumstances” warranting a direct appeal to this Court,”<sup>358</sup> as “there exists a degree of urgency in respect to the adoption of remedial environmental measures.”<sup>359</sup> In July 2020, the Supreme Court reversed the ruling of the high court and quashed the Plan. The Supreme Court reasoned that the 2015 Act “requires a sufficient level of specificity in the measures identified in a compliant plan that are required to meet the National Transitional Objective by 2050.”<sup>360</sup> “The 2015 Act as a whole involves both public participation in the process leading to the adoption of a plan but also transparency as to the formal government policy, adopted in accordance with a statutory

---

<sup>352</sup> *Friends of the Irish Environment v. the Government of Ireland, Ireland and the Attorney General* (High Court, Judicial Review) [2019] IEHC 747, [2017 No. 793 JR], para. 1

<sup>353</sup> *Ibid.*

<sup>354</sup> *Ibid.*, para. 8

<sup>355</sup> *Ibid.*, para. 12

<sup>356</sup> Climate Change Litigation Databases, ‘Friends of the Irish Environment v. Ireland’ <<http://climatecasechart.com/non-us-case/friends-of-the-irish-environment-v-ireland/>> accessed at 9 February 2021

<sup>357</sup> *Friends of the Irish Environment v. the Government of Ireland, Ireland and the Attorney General* (High Court, Judicial Review) [2019] IEHC 747, [2017 No. 793 JR], para. 143

<sup>358</sup> *Friends of the Irish Environment v. the Government of Ireland and the Attorney General* (Supreme Court, Determination) [2020] IESCDT 13, [2017 No. 793 JR], para. 2

<sup>359</sup> *Ibid.*, para. 8

<sup>360</sup> *Friends of the Irish Environment v. the Government of Ireland, Ireland and the Attorney General* (Supreme Court, Appeal) [July, 2020], [Appeal No: 205/19], para. 9.2

regime, for achieving what is now the statutory policy of meeting the [National Transitional Objective] by 2050.”<sup>361</sup> Therefore, “a compliant plan must be sufficiently specific as to policy over the whole period to 2050,”<sup>362</sup> and the current “Plan falls well short of the level of specificity required to provide that transparency and to comply with the provisions of the 2015 Act.”<sup>363</sup>

96. With regards to the claims made under the ECHR however, the Supreme Court concluded “that FIE, as a corporate entity which does not enjoy in itself the right to life or the right to bodily integrity, does not have standing to maintain the rights-based arguments sought to be put forward whether under the Constitution or under the ECHR.”<sup>364</sup> Consequently, the arguments brought forward by FIE on the basis of the ECHR were not considered.<sup>365</sup>

### Arctic oil drilling Case – Norwegian Supreme Court

97. In October 2016, Greenpeace and several other NGOs brought legal action before the Oslo District Court against the decision of the Norwegian government to grant “10 petroleum production licences for a total of 40 blocks or sub-blocks on the Norwegian continental shelf in the maritime area,”<sup>366</sup> to drill for Arctic oil. The plaintiffs argued that the licences would allow access to yet undeveloped fossil fuel deposits, which is inconsistent with the goal to keep the global temperature below 1.5°C. Additionally, considering that the arctic is a highly sensitive area the operation would cause additional emissions and be accompanied with unprecedented risks of damage and spills.<sup>367</sup> The NGOs argued that this, in turn, would be against the Norwegian Constitution (Article 112), which protects the right to a healthy environment where natural resources are managed on long term considerations, as well as Article 2 and 8 of the ECHR.

98. However, in January 2018 the District Court ruled in favour of the Norwegian government, in January 2020 the Court of Appeal confirmed this decision, and “on December 22, 2020, the Supreme Court announced its decision rejecting the appeal and upholding the licenses for deep-sea extraction.”<sup>368</sup> Important to note here is that “the oil and

---

<sup>361</sup> *Ibid.*

<sup>362</sup> *Ibid.*

<sup>363</sup> *Ibid.*, para. 9.3

<sup>364</sup> *Ibid.*, para. 9.4

<sup>365</sup> *Ibid.*, para. 9.5

<sup>366</sup> *Natur og Ungdom et al v. The Government of Norway through the Ministry of Petroleum and Energy* (22 December 2020, Supreme Court of Norway) HR-2020-2472-P, (case no. 20-051052SIV-HRET), paras. 2, 6

<sup>367</sup> Climate Change Litigation Databases, ‘Greenpeace Nordic Ass’n v. Ministry of Petroleum and Energy’ <<http://climatecasechart.com/non-us-case/greenpeace-nordic-assn-and-nature-youth-v-norway-ministry-of-petroleum-and-energy/>> accessed at 24 February 2021

<sup>368</sup> *Ibid.*

gas sector is Norway's largest measured in terms of value added, government revenues, investments and export value.”<sup>369</sup> Consequently, “several proposals to stop the awarding of licenses in the 23rd Licensing Round were rejected by the [Norwegian parliament] with broad political majorities during the period before the decision was made.”<sup>370</sup> Considering the separation of powers between the judiciary and the decision-making bodies, the Courts “set a very high threshold on citizens to demonstrate that the state violated its duty of care”<sup>371</sup> in case of such political decisions.<sup>372</sup> Accordingly, the Court argued that “although the Norwegian constitution protects citizens from environmental and climate harms, the future emissions from exported oil are too uncertain to bar the granting of these petroleum exploration licenses,”<sup>373</sup> also not meeting the “actual and imminent risk” requirements under the relevant Articles of the ECHR.<sup>374</sup>

### L’Affaire du Siècle – Parisian Administrative Court

99. On 17 December 2018, four non-profit groups, Fondation pour la Nature et l’Homme (FNH), Greenpeace France, Notre Affaire à Tous and Oxfam France, send a letter to 13 members of the French government, initiating the “first step towards a lawsuit against the French State [for] its inadequacy in implementing proper measures that could effectively tackle climate change in France.”<sup>375</sup> The French government rejected the letter which caused the plaintiffs to bring the case before the Administrative Court in Paris in March 2019, requesting this Court to order France to: (1) take measures to reduce the global greenhouse gas emissions below the threshold of 1.5 °C, (2) take all necessary measures to achieve France’s targets for reducing greenhouse gas emissions, (3) take the necessary measures to adapt to the effects of climate change, and (4) take the necessary measures to protect citizens’ lives and health from the risks of climate change.<sup>376</sup> The legal basis of this request was the French Charter of the Environment, Articles 2 and 8 of the ECHR and

<sup>369</sup> Norwegian Petroleum, ‘The government’s revenues’ <<https://www.norskpetroleum.no/en/economy/governments-revenues/>> accessed at 24 February 2021

<sup>370</sup> *Natur og Ungdom et al v. The Government of Norway through the Ministry of Petroleum and Energy* (22 December 2020, Supreme Court of Norway) HR-2020-2472-P, (case no. 20-051052SIV-HRET), para. 81

<sup>371</sup> Alexandru Gociu, ‘Extraterritoriality of Oil Constitutionalism in *People v Arctic Oil*’ (16 February 2021) *EJIL: Talk!* <<https://www.ejiltalk.org/extraterritoriality-of-oil-constitutionalism-in-people-v-arctic-oil/>> accessed at 24 February 2021

<sup>372</sup> *Natur og Ungdom et al v. The Government of Norway through the Ministry of Petroleum and Energy* (22 December 2020, Supreme Court of Norway) HR-2020-2472-P, (case no. 20-051052SIV-HRET), para. 182

<sup>373</sup> Climate Change Litigation Databases, ‘Greenpeace Nordic Ass’n v. Ministry of Petroleum and Energy’ <<http://climatecasechart.com/non-us-case/greenpeace-nordic-assn-and-nature-youth-v-norway-ministry-of-petroleum-and-energy/>> accessed at 24 February 2021

<sup>374</sup> *Natur og Ungdom et al v. The Government of Norway through the Ministry of Petroleum and Energy* (22 December 2020, Supreme Court of Norway) HR-2020-2472-P, (case no. 20-051052SIV-HRET), paras. 166, 167

<sup>375</sup> *Notre Affaire à Tous, et al, ‘Inaction over climate change: let’s fight for justice’* (press release, 12 Augustus 2018) <[http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2018/20181218\\_NA\\_press-release-1.pdf](http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2018/20181218_NA_press-release-1.pdf)> accessed at 24 February 2021

<sup>376</sup> Marine Yzquierdo and the Legal Strategy Team of Notre Affaire à Tous, Brief on the Legal Request Submitted to the Administrative Court of Paris (14 March 2019) (Unofficial translation of the summary request), p. 1

general principles of law, consisting mainly of international standards such as the Stockholm and Rio Declaration and the UNFCCC.<sup>377</sup>

100. In January 2020 the case was heard and on 3 February 2021 the Administrative Court of Paris “issued a decision recognizing that France's inaction has caused ecological damage from climate change.”<sup>378</sup> Additionally, before ruling on the conclusions of the request made by the plaintiffs, the Administrative Court ordered the State, in order to put an end for the future to the aggravation of the ecological damage observed, to take all measures allowing to achieve the objectives that France has set for itself in terms of reducing greenhouse gas emissions.<sup>379</sup> In line herewith, it instructed the State “to disclose steps it was taking to meet its climate targets within two months.”<sup>380</sup>

### Portuguese Youth Activists – European Court of Human Rights

101. Although not filed before a national court, the application filed before the ECtHR by six Portuguese youth activists between the age of 8 and 21 supported by the NGO Global Legal Action Network (GLAN), is worth mentioning under this section.

102. With this application, filed against 33 of the Council of Europe member States in September 2020, the youth activists and the NGO “seek a legally binding decision from the [ECtHR] requiring governments in Europe to take the urgent action needed to stop the climate crisis,”<sup>381</sup> particularly related to the greenhouse gas emissions. Besides addressing States obligations laid down in the UNFCCC and the Paris Agreement, the application invokes Articles 2 (right to life) and 8 (right to private and family life) the ECHR, on the basis that the six applicants are, due to climate change, subjected to worsening heatwaves in Portugal which brings risks to their lives and well-being.<sup>382</sup> The heatwaves during the summers in Portugal has broken record temperatures several years in a row, and caused an increase of devastating wildfires due which 120 lives were lost in 2017.<sup>383</sup> Additionally, the heatwaves increased fatal illnesses such as heat stress and respiratory diseases.<sup>384</sup> The applicants argued that the consequences of climate change, which will only increase

---

<sup>377</sup> Climate Change Litigation Databases, ‘Notre Affaire à Tous and Others v. France’ <<http://climatecasechart.com/non-us-case/notre-affaire-a-tous-and-others-v-france/>> accessed at 24 February 2021

<sup>378</sup> *Ibid.*

<sup>379</sup> *Notre Affaire à Tous et al (in the name of the French people) v. France* (3 February 2021) Administrative Court of Paris, Case no. 1904967-1904968-1904972-1904976/4-1, p. 37, Art. 4

<sup>380</sup> Climate Change Litigation Databases, ‘Notre Affaire à Tous and Others v. France’ <<http://climatecasechart.com/non-us-case/notre-affaire-a-tous-and-others-v-france/>> accessed at 24 February 2021

<sup>381</sup> GLAN, ‘The Case’ FAQ: What is the goal of this case?, <<https://youth4climatejustice.org/the-case/>> accessed at 8 February 2021

<sup>382</sup> GLAN, ‘The Case’ Case Documents: Court Application, download available at: <<https://youth4climatejustice.org/the-case/>>

<sup>383</sup> *Ibid.*, Application form, paras. 16, 17

<sup>384</sup> *Ibid.*, Application form, para. 19

over the years to come,<sup>385</sup> already affects their current lives and well-being.<sup>386</sup> Amongst other things, heatwaves caused reduced energy levels, difficulty sleeping, inability to spend time or exercise outdoors.<sup>387</sup> The wildfires, *inter alia*, caused temporary closure of schools due to the smoke in the air, gardens covered in ashes and fire risk and fear due to proximity of their homes to the fires.<sup>388</sup> Additionally, under Article 14 of the ECHR (Prohibition of discrimination), the applicants argue that on the basis of age, the burden of climate change is shifted onto younger generations by the inadequate adoption of climate mitigation measures by States.<sup>389</sup>

103. In order for applications to be admissible before the ECtHR however, applicants need to meet the admissibility criteria laid down in Article 35 of the Convention, which includes, *inter alia*, that the applicants have exhausted all local remedies (principle of subsidiarity). Remarkably however, the applicants directly filed their application to the Court. They did so, firstly, because the claim relates to a violation of rights which is caused cumulatively by the 33 Respondents. Consequently, a Portuguese court would not have the jurisdiction to determine the claim made against the 32 States other than Portugal. Additionally, the applicants claim that, thus far, national courts have not yet provided adequate remedies in climate cases,<sup>390</sup> and “the urgency of the matter prevents, in practice, pursuits of an adequate remedy in each and every respondent State’s domestic courts.”<sup>391</sup> Secondly, individually engaging national proceedings in 33 States would impose an unreasonable burden on the applicants.<sup>392</sup> Those arguments seem to be “consistent with the principle of subsidiarity which has always co-existed alongside the well-established exceptions to the exhaustion of domestic remedies rule on which the Applicants rely.”<sup>393</sup>

104. In November 2020, “the [ECtHR] gave notice of the application to the defending governments and put questions to the parties under Article 1 (jurisdiction of States), Article 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment), Article 8 (right to private and family life and home), Article 14 (prohibition of discrimination) and Article 34

---

<sup>385</sup> *Ibid.*

<sup>386</sup> *Ibid.*, Application form, para. 23

<sup>387</sup> *Ibid.*, Application form, paras. 21, 22

<sup>388</sup> *Ibid.*

<sup>389</sup> *Ibid.*, Application form, para. 31

<sup>390</sup> *Ibid.*, Annex: Statement of the facts, paras. 36, 37, 38, 39

<sup>391</sup> *Ibid.*, Application form, para. 32(a)

<sup>392</sup> *Ibid.*, Application form, para. 32(b)

<sup>393</sup> Clark, *et al.*, ‘Climate change and the European Court of Human Rights: The Portuguese Youth Case’ (6 October 2020) *EJIL: Talk!*, <<https://www.ejiltalk.org/climate-change-and-the-european-court-of-human-rights-the-portuguese-youth-case/>> accessed at 8 February 2021

(individual applications) of the [ECHR], and Article 1 (protection of property) of Protocol No. 1 to the [ECHR].”<sup>394</sup>

### **C. *Actio popularis* and broad *locus standi* in environmental cases**

105. Several member States have included *actio popularis* (“namely, the capacity of an individual to act in the collective interest, which cannot be reduced to the sum of individual interests”) <sup>395</sup> within different frameworks. <sup>396</sup> Particularly in environmental cases, which “seldom concern individual interests [...] but much more often relate to collective human interests and even shared damage [...]”,<sup>397</sup> *actio popularis* or a relaxed *locus standi* (where environmental organisations or associations are legally allowed to present environmental cases related to human rights violations in court), is an important aspect for better ensuring a human right to a safe, clean healthy and sustainable environment and introduced by several States.<sup>398</sup>

### **D. Environmental impact assessments (EIAs)**

---

<sup>394</sup> European Court of Human Rights, Factsheet ‘Environment and the European Convention on Human Rights’ (last updated December 2020), p. 2, download available at: <https://www.echr.coe.int/Pages/home.aspx?p=press/factsheets&c=>>

<sup>395</sup> E. Lambert, ‘The Environment and Human Rights’ (27 February 2020), Introductory Report to the High-Level Conference Environmental Protection and Human Rights, p. 21, download available at: <https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-and-the-environment>

<sup>396</sup> See Council of Europe, *Manual on Human Rights and the Environment* (second edition 2012, Council of Europe Publishing): For example, “in Austria, the term “environmental information” used in the Environmental Information Act is broadly phrased so that any kind of information on the state of the environment, factors, measures or activities (possibly) having an impact on the environment or conducive to the protection of the environment can be collected.” (p. 174). “The Hungarian Act on the General Rules of Environmental Protection provides that natural and legal persons and unincorporated entities are entitled to participate in non-regulatory procedures concerning the environment. Everyone has the right to call the attention of the user of the environment and the authorities to the fact damaged or polluted. It also allows environmental NGOs to be a party in proceedings concerning environmental protection. The Act, in addition, contains the idea of *actio popularis* stating that “in the event the environment is being endangered, damaged or polluted, organizations are entitled to intervene in the interest of protecting the environment” which includes filing a lawsuit against the user of the environment (Section 99). Additionally, Hungary has established the Office of the Environment Ombudsman to facilitate public complaints in environmental matters.” (p. 175, 176). “According to Article 14 of the Slovenian Environment Protection Act, in order to exercise their right to a healthy living environment, citizens may, as individuals or through societies, file a request with the judiciary. Ultimately, by such a request citizen can oblige a person responsible for an activity affecting the environment, to cease such an activity if it causes or would cause an excessive environmental burden or presents a direct threat to human life or health. Moreover, this can lead to the prohibition of starting an activity which affects the environment if there is a strong probability that the activity will present such a threat. In addition, the Supreme Court has recognised the right to a healthy living environment as one of the personal rights for whose violation compensation and just satisfaction can be claimed.” (p. 176). Moreover, in Spain NGOs and other non-profit entities may exercise an *actio popularis* before the courts. (p. 178).

<sup>397</sup> *Ibid.*, p. 27

<sup>398</sup> This is the case, for example, in Belgium, France, the Netherlands and Portugal. See Truihlé & Hautereau-Boutonnet, ‘Le procès environnemental. Du procès sur l’environnement au procès pour l’environnement’ (2019), Rapport final de recherche (Mission de recherche droit et justice), p. 64, 83, download available at: <http://www.gip-recherche-justice.fr/publication/le-proces-environnemental-du-proces-sur-lenvironnement-au-proces-pour-lenvironnement/>

106. Several international treaties, amongst those mentioned in Section III(B), require States to adopt EIAs.<sup>399</sup> Additionally, multiple member States have adopted laws and acts that include an environmental assessment procedure, to ensure that the environmental implications of decisions are taken into account before the decisions are made.<sup>400</sup>

## **E. Environmental education and awareness**

107. Education and awareness form a crucial part in the protection of the environment.<sup>401</sup> Only once people are provided with knowledge on the importance of the protection of the environment, can they make conscious choices with respect to their own environmental behaviour and understand the effect of environmental degradation on their human rights. Multiple instruments, such as those mentioned in Section III, therefore reintegrate the need for States to introduce educational and awareness programmes.<sup>402</sup> Accordingly, multiple member States have adopted measures to ensure that the protection of the environment and the promotion of sustainable development is included in curricula at primary and secondary school levels and national awareness-raising initiatives.<sup>403</sup>

---

<sup>399</sup> See, for example: *Convention on Biological Diversity* (5 June 1992), 1760 UNTS 69, Art. 14; *Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)* (1991), UNTS vol. 1989, Art. 2(1); *Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention)* (1992, as amended 2003) UNTS. Vol. 1936, Art. 2(1); *United Nations Framework Convention on Climate Change (UNFCCC)* (1992), UNTS vol. 1771, Art. 4(1)(f); *Paris Agreement* (2015), Art. 7(9)(c)

<sup>400</sup> See Council of Europe, *Manual on Human Rights and the Environment* (second edition 2012, Council of Europe Publishing): For example, “Belgian law requires the state to carry out substantial EIAs to guarantee its effective control over potentially harmful activities. Article 28 of the Law of 20.01.1999 states that “any activity in marine areas that is subject to a permit or authorization, [...] is subject to an environmental impact assessment by the competent authority appointed to this task by the Minister, both before and after granting the permit or authorization. The EIA is designed to assess the effects of the activities on the marine environment.” (p. 169). “The Nature Diversity Act of Norway also contains the requirement to undertake EIA to strike a fair balance between the various conflicting interests. Another very detailed example describing the requirements of an EIA is the Hungarian Act LIII of 1995.” (p. 169). The Albanian Law “On environmental protection” requires that activities with environmental impacts undergo an EIA process before implementation. (p. 170). “Also, Switzerland has enacted the obligation of performing an EIA for installations which are likely to cause extensive environmental contaminations (Article 10a ff. of the Environment Protection Act).” (p. 172).

<sup>401</sup> UN General Assembly, ‘Right to a healthy environment: good practices. 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, para. 14; UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13) (8 December 1999), E/C.12/1999/10, para. 1

<sup>402</sup> *Convention on the Conservation of European Wildlife and Natural Habitats* (1979), ETS No. 104, Art. 3(3); *Convention on the Rights of the Child* (20 November 1989), 1577 UNTS 3, Art. 29(1)(e); *United Nations Framework Convention on Climate Change (UNFCCC)* (20 January 2014), UNGA Res. A/RES/48/189, Art. 6(a)(i); *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa* (14 October 1994), UNTS vol. 1954, Art. 19(3); *Convention on Biological Diversity* (5 June 1992), 1760 UNTS 69, Art. 13

<sup>403</sup> See Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Appendix VI(6): For example: “In Belgium, initiatives exist at the regional level to raise citizens' awareness of the environment. [...] A cooperation agreement on environmental education and sustainable development [...] provides the framework for policy dialogue to support environmental education within the school system.” Additionally, “Finland has national strategies and programmes in place for promoting environmental education and awareness. Functional co-operation structures at the national as well as at the regional level have been set up for the implementation and monitoring thereof. [...]” “In Poland, the role of environmental education in raising the ecological awareness is emphasized in the Environmental Protection Law by the obligation to take into account the inclusion of environmental and sustainable development issues in the general education curriculum for all types of schools (Article 77 para. 1). [...]” “In Sweden, the government has instructed the

## F. Protection of environmental human rights defenders

108. The UN defines environmental human rights defenders (HRDs) as “individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna.”<sup>404</sup> They, among other things, play a large role in the awareness-raising of pressing environmental issues and holding States accountable for non-compliance with human rights obligations.<sup>405</sup> Accordingly, “there exists a strong public interest in enabling groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment.”<sup>406</sup> Indeed, the protection of environmental HRDs is closely connected to the assurance of access to environmental information, awareness and public participation in decision-making.<sup>407</sup> Unfortunately, HRDs, including environmentalists, whistle-blowers, NGOs, journalists, and lawyers are continuously hindered in their advocacy.<sup>408</sup>

109. The right to the freedom of expression, association and assembly, and the obligation on States to ensure those rights whilst not interfering with them, is laid down in the ECHR and other international treaties.<sup>409</sup> Moreover, the Committee of Ministers called on member States and the bodies of the Council of Europe to continue to include the protection of HRDs

---

Swedish Environmental Protection Agency to investigate and account for the implementation in Sweden of Article 12 of the Paris Agreement regarding public engagement, training and education as well as access to information on climate. [...]” “In accordance with the Georgian Law on Environmental Protection, the citizen has the right to “receive environmental and ecological education, raise the level of environmental awareness” (Article 6). [...]” In Bulgaria “[...] The environment awareness and responsible behavior concerning the preservation of the environment are taught from an early pre-school age. Within the educational policy, in accordance with the Pre-school and School Education Act (Art. 77), an additional competence was introduced – sustainable development and healthy lifestyle. [...]” Amongst other things, in “Switzerland, the National Agency for Education 21 was established in 2013 as a competence centre for schools and teacher training to promote education for sustainable development (ESD) [...],” “the Czech Republic, Article 13 of the Act on the Right to Information on the Environment sets out that specified public authorities (mainly ministries and regional authorities) are responsible for the inclusion of the environmental education into their strategic and policy documents that guide public education [...],” and “Luxembourg set up an inter-ministerial committee for education for sustainable development in February 2008 [...]”

<sup>404</sup> UN General Assembly, ‘Report of the Special Rapporteur on the situation of human rights defenders’ (3 August 2016), UN Doc. A/71/281, para. 7

<sup>405</sup> Council of Europe, ‘Human Rights Defenders’ <<https://www.coe.int/en/web/commissioner/human-rights-defenders>> accessed at 11 September 2020

<sup>406</sup> *Steel and Morris v. the United Kingdom* (Judgment) (15 February 2005), ECHR Application no. 68416/01, para. 89

<sup>407</sup> UN General Assembly, ‘Report of the Special Rapporteur on the situation of human rights defenders’ (3 August 2016), UN Doc. A/71/281, paras. 13, 14, 15

<sup>408</sup> *Ibid.*, paras. 2; 8; Council of Europe, ‘Human Rights Defenders’ <<https://www.coe.int/en/web/commissioner/human-rights-defenders>> accessed at 11 September 2020; Council of Europe, ‘Hands Off Press Freedom: Attacks on Media in Europe Must Not Become a New Normal’ (2020) Annual Report

<sup>409</sup> *European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)* (4 November 1950) ETS No. 5, Arts. 10; 11; *International Covenant on Civil and Political Rights (ICCPR)* (16 December 1966), UN Doc. A/6316, 999 UNTS 17, Arts. 19; 21; 22; *Universal Declaration of Human Rights* (10 December 1948), UN Res. 217A(III), UN Doc. A/810, Art. 19; 20



within the adoption of measures and activities.<sup>410</sup> Accordingly, multiple member States have adopted measures to ensure that HRDs are protected, which often include environmental HRDs.<sup>411</sup>

## G. Short chapter recap

110. This chapter has identified the approaches and good practices related to human rights and the environment within member States their national jurisdictions. Many States have environmental protection recognized in their constitutions either as a right-based formulation or a general constitutional value that obligates States to protect the environment. In light hereof, an increasing number of cases invoking those constitutional as well as Convention rights with respect to the environment have appeared before national courts of member States, in where NGOs, certain societal groups, and youth activists have tried to attain justice for human rights related to the environment. Additionally, the good practices of member States with respect to *actio popularis* or a broadened *locus standi*, EIAs, environmental education and awareness and the protection of environmental human rights defenders, shows the growing recognition of important substantial and procedural aspects that are necessary for the improved enjoyment of human rights in the context of the environment.

---

<sup>410</sup> Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities (Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies) <[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805d3e52](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d3e52)> accessed at 11 September 2020

<sup>411</sup> See Council of Europe, *updated draft Manual on Human Rights and the Environment* (third edition 2021), Appendix VI(7): For example: "In Georgia, environmental rights of each person, including whistle-blowers and civil society, are protected by [...] the Constitution of Georgia, the Law of Georgia on Environmental Protection, and the General Administrative Code of Georgia. According to the Article 31 of the Constitution of Georgia, everyone has the right to apply to a court for protection of their rights (including environmental rights)." Bulgaria has a similar approach. "Several member States have recently adopted special legislation or other measures on the protection of whistle-blowers. For example, Finland and Belgium are currently working on the transposition, by 17 December 2021, of the EU Directive on Whistleblower Protection (*Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the Protection of Persons Who Report Breaches of Union Law*). The material scope of the Directive includes environmental protection."

## **V. CONCLUSIONS AND POSSIBLE FOLLOW-UP**

111. Although international environmental law and human rights law have most often been treated as two distinct fields, the instruments discussed in this report all contain provisions related to the protection of human rights through the proper protection of the environment and vice versa.

112. Accordingly, in the Introductory Report to the High-Level Conference Environmental Protection and Human Rights, Prof. E. Lambert concludes that “the member states of the Council of Europe are not being asked to take a leap of faith but are simply being requested to intelligently combine the existing standards and good practices so that the Council of Europe will not only stand as the most sophisticated model of European human rights protection in the 20<sup>th</sup> century but also become the benchmark for ecological human rights in the 21<sup>st</sup> century.”<sup>412</sup>

### **A. Updating the Manual**

113. As a first task the CDDH has been asked to update the 2012 version of the Manual on Human Rights and the Environment, which includes the emerging principles on environmental protection in the pertinent case law of the European Court of Human Rights. Additionally, the Manual considers the relevant conclusions and decisions of the European Committee of Social Rights which has, amongst other things, interpreted the right to protection of health under the European Social Charter as including a right to a healthy environment. A preliminary draft of a 3<sup>rd</sup> edition of the Manual is contained in document CDDH-ENV(2021)02.

114. At the CDDH Bureau meeting in May 2020, it was agreed to invite member States to update their contributions to the Appendix of the Manual containing national good practices. Member States were also invited to provide further information on national practices in additional areas such as the right to environmental education as well as practices aimed at better protecting environmental human rights defenders/whistle-blowers and civil society more generally. The contributions received have been incorporated in the updated draft version of Appendix VI of the Manual.

### **B. Preparing a non-binding instrument**

115. The second task of the CDDH is to prepare a new non-binding instrument (e.g, recommendation, guidelines, etc.). This new instrument should be based on the existing

---

<sup>412</sup> E. Lambert, ‘The Environment and Human Rights’ (27 February 2020), Introductory Report to the High-Level Conference Environmental Protection and Human Rights, p. 30, download available at: <https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-and-the-environment>

standards and national good practices. A preliminary draft non-binding instrument on human rights and the environment is contained in document CDDH-ENV(2021)03.

116. Many declarations and statements refer to the importance of providing environmental information to the public and ensuring public participation in environmental decision-making. Some also include provisions on access to remedies for environmental harm.

117. During the High-level Conference on Environmental Protection and Human Rights, the Representative of Joint Council on Youth to the Council of Europe expressed the wish of the Advisory Council on Youth to participate in further drafting work related to human rights and the environment. As youth (and future generations) are going to be increasingly affected by the environmental crisis, their involvement in the development of environmental rights and environmental decisions is of great importance.<sup>413</sup> Over the past years the youth climate movement has attracted much global attention in particular, and it is estimated that over 13 million young people have participated in climate strikes worldwide since August 2018.<sup>414</sup> In acknowledgment of such universal request for adequate environmental action and in respect for the well-being of future generations, youth should be provided with access to information and have the opportunity to represent their perspectives on, and participate in, decisions related to environmental matters.<sup>415</sup>

### **C. Council of Europe and environmental human rights**

118. If the Council of Europe is to succeed in making human rights ecological and guarantee “access to environmental justice”, it will require a holistic view to life with the contribution from all sectors within the organisation.<sup>416</sup>

119. After multiple attempts by the Parliamentary Assembly to add an additional protocol to the European Convention on Human Rights, the Committee of Ministers stated in 2000 in its Reply to Recommendation 1431 (1999) – Future action to be taken by the Council of Europe in the field of environment protection that “the recognition of the individual and legally enforceable nature of the human right to a healthy and viable environment meets at present

<sup>413</sup> United Nations, ‘Report of the United Nations Conference on Environment and Development’ (Rio de Janeiro, 3-14 June 1992), UN Doc. A/CONF/151/26/Rev.1 (Vol.I), Annex II ‘Agenda 21’, Chapter 25.1

<sup>414</sup> Fridays for Future, ‘Strike Statistics’ <<https://fridaysforfuture.org/what-we-do/strike-statistics/>> accessed at 10 September 2020; Fridays for Future, ‘List of Countries’ <<https://fridaysforfuture.org/what-we-do/strike-statistics/list-of-countries/>> accessed at 10 September 2020

<sup>415</sup> United Nations, ‘Report of the United Nations Conference on Environment and Development’ (Rio de Janeiro, 3-14 June 1992), UN Doc. A/CONF/151/26/Rev.1 (Vol.I), Annex II ‘Agenda 21’, Chapter 25.4

<sup>416</sup> E. Lambert, ‘The Environment and Human Rights’ (27 February 2020), Introductory Report to the High-Level Conference Environmental Protection and Human Rights, download available at: <<https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-and-the-environment>>

certain difficulties, legal and conceptual.”<sup>417</sup> Thus the challenge will be to overcome such legal and conceptual difficulties in order to give full recognition of a human right to a safe, clean, healthy and sustainable environment which is enforceable.

120. Although the overview exposed in Section IV above appears to show that the constitutional provisions on environmental protection in most member States are more ambitious, even if only in terms of asserting governmental responsibilities, than in the caselaw of the Court, the Council of Europe’s major legal instruments and jurisprudence only indirectly recognise the obligation and responsibility of member States to defend the right to life against environmental harms, and the explicit recognition of the right to a safe, clean, healthy and sustainable environment is lacking as a basis for more resolute action at both European and national levels.

#### **D. Possible further work based on the outcomes of and suggestions made at the High-Level Conference**

##### The need for a new binding instrument on human rights and the environment

121. As read above in Part B, the first step towards a non-binding instrument on the existing principles of human rights and the protection of the environment, is currently in motion. Although, as seen in this report, the “explicit recognition of the human right to a healthy environment [...] turned out to be unnecessary for the application of human rights norms to environmental issues,”<sup>418</sup> the adoption of a non-binding instrument which recalls the existing standards and practices in the field of human rights and the environment,<sup>419</sup> recognizes the importance of the protection of the environment *vis-à-vis* the effective insurance of human rights. As the effect of environmental damage erodes the enjoyment of existing human rights significantly,<sup>420</sup> this non-binding instrument reaffirms “that environmental protection is on the same level of importance[, and closely intertwined with,] other human interests that are fundamental to human dignity, equality and freedom,”<sup>421</sup> in line with what national jurisdictions and international instruments have already recognized.

---

<sup>417</sup> Committee of Ministers, Doc. 8892, Reply to Recommendation 1431 (1999) – Future action to be taken by the Council of Europe in the field of environment protection, 20 November 2000.

<sup>418</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, p. 4, para. 13

<sup>419</sup> *CDDH Report 92nd meeting Strasbourg* (26–29 November 2019), CDDH(2019)R92, Appendix IV, Terms of reference of the CDDH, DH-SYSC and DH-BIO for 2020 – 2021 (as adopted by the Committee of Ministers at its 1361st meeting, 19-21 November 2019), Specific tasks, (v), p. 42

<sup>420</sup> *Ibid.*, p. 8, para. 3; UN General Assembly, ‘Resolution adopted by the Human Rights Council, 16/11 Human rights and the environment’ (12 April 2011), UN Doc. A/HRC/RES/16/11, p. 2

<sup>421</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, p. 5, para. 16

122. Nonetheless, bearing in mind existing rights, developments at different levels, current expectations regarding the environment emergency and the increasing pressure the environmental crisis has on the enjoyment of human rights nationally, regionally, and globally, member States could additionally, as a second step, consider the advisability of adopting a binding European instrument on human rights and the environment. This would ensure that the protection of environmental human rights is more tangible and effective, by complementing the “right to live in a good-quality environment [with] the duty of public and private institutions and natural and legal persons to protect the environment.”<sup>422</sup>

123. At the High-Level Conference on “Environmental Protection and Human Rights” on 27 February 2020, the author of the introductory report to the Conference, Prof. Elisabeth Lambert, noted several priority areas for consideration when developing a more environmental human rights of the future.

124. First and foremost, this would include the specific recognition and definition of an individual *and* collective human right to a good-quality environment. “[T]he right to a healthy and ecologically balanced environment”<sup>423</sup> falls within the notion of third generation “solidarity- rights”<sup>424</sup> which, contrary to first-<sup>425</sup> and second-generation rights,<sup>426</sup> “reflect a certain conception of community life [and] can only be implemented by the combined efforts of everyone: individuals, states and other bodies, as well as public and private institutions.”<sup>427</sup> It is suggested, that such a definition should include terms as “a “decent” or

---

<sup>422</sup> E. Lambert, ‘The Environment and Human Rights’ (27 February 2020), Introductory Report to the High-Level Conference Environmental Protection and Human Rights, p. 19, download available at: <<https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-and-the-environment>>

<sup>423</sup> Karel Vašák, ‘Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights’ (November 1977) UNESCO Courier *Southern Africa at grips with racism*, No. 11, p. 29

<sup>424</sup> *Ibid.*

<sup>425</sup> “The first generation concerns “negative” rights, in the sense that their respect requires that the state do nothing to interfere with individual liberties, and correspond roughly to the civil and political rights.” Within the Council of Europe, those rights are, for the most part, found in within the Convention. See Karel Vašák, ‘Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights’ (November 1977) UNESCO Courier *Southern Africa at grips with racism*, No. 11, p. 29

<sup>426</sup> “The second generation, on the other hand, requires positive action by the state to be implemented, as is the case with most social, economic and cultural rights,”<sup>426</sup> “including particularly the adoption of legislative measures.” In other words, those rights require progressive realization, a concept that “constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense the obligation differs significantly from that [of most] civil and political rights which [require] an immediate obligation to respect and ensure all of the relevant rights.” Within the Council of Europe, those rights are, for the most part, found in the Charter. See Karel Vašák, ‘Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights’ (November 1977) UNESCO Courier *Southern Africa at grips with racism*, No. 11, p. 29; UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant)* (14 December 1990), E/1991/23, paras. 3, 9

<sup>427</sup> Karel Vašák, ‘Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights’ (November 1977) UNESCO Courier *Southern Africa at grips with racism*, No. 11, p. 29

“ecologically viable” environment,”<sup>428</sup> or a “safe, clean, healthy and sustainable environment,”<sup>429</sup> as this is a “broader concept than that of the right to a “healthy environment” and one that embraces an eco-centric view and an intergenerational approach.”<sup>430</sup>

125. Secondly, and this intertwines with the importance of the right being collective, and the recognition of the eco-centric view and intergenerational value of nature; right holders should be able to seek justice and remedies for environmental harm, even if they themselves are not a direct victim. Therefore, the instrument should confer *locus standi* to environmental organisations or associations for them to be able to present environmental cases, “which very frequently transcend individual interests,”<sup>431</sup> and “consideration might be given to a limited *actio popularis* restricted to people in the vicinity of environmental damage.”<sup>432</sup> This entails the recognition by this instrument of “ecological damage,”<sup>433</sup> whereby “any person responsible for ecological damage is liable for the remediation thereof.”<sup>434</sup> Such damage could, for example, be defined as “consisting in significant harm to elements or functions of ecosystems or collective benefits derived from the environment by human beings.”<sup>435</sup> Accordingly, the instrument should also recognize restorative remedies (“process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed”<sup>436</sup>).<sup>437</sup> This as the harm done to the environment may remain (for present and future generations) irrespective of whether financial reparation has been provided to the individual.

126. Thirdly, in line with the third-generation aspect of this right, it is also proposed to end the impunity of non-state actors by making provision for a system of complaints against businesses, to include other substantive rights, such as the right to environmental education

---

<sup>428</sup> E. Lambert, ‘The Environment and Human Rights’ (27 February 2020), Introductory Report to the High-Level Conference Environmental Protection and Human Rights, p. 1, download available at: <<https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-and-the-environment>>

<sup>429</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>430</sup> E. Lambert, ‘The Environment and Human Rights’ (27 February 2020), Introductory Report to the High-Level Conference Environmental Protection and Human Rights, p. 1, download available at: <<https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-and-the-environment>>

<sup>431</sup> *Ibid.*, p. 21

<sup>432</sup> *Ibid.*

<sup>433</sup> *Ibid.*

<sup>434</sup> *Ibid.*, p. 22

<sup>435</sup> *Ibid.*

<sup>436</sup> Society for Ecological Restoration, ‘The SER International Primer on Ecological Restoration’ (2 October 2004) International Science & Policy Working Group, p. 3, download available at: <<https://www.ser.org/page/SERDocuments>>

<sup>437</sup> As seen, for example, in Article 1 of the *Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment* (21 June 1993), ETS No. 150, and Article 6 of *Convention on the Protection of Environment through Criminal Law* (1998), ETS No. 172.

and greater protection of environmental activists, and environmental principles such as the principle of prevention and precaution.

127. Lastly, the right of access to environmental justice should be strengthened, and a model for environmental proceedings might be developed at the European level.

128. The overall suggestions for the introduction of the right to a safe, clean, healthy and sustainable environment with the Council of Europe framework, so far included: (1) the adoption of an additional protocol to the Convention, (2) the adoption of an additional protocol to the Charter and, (3) the adoption of a new, independent instrument. These options will be explored further below.

#### *Option of an additional Protocol to the ECHR*

129. Although the previous proposals towards the adoption of an Additional Protocol to the Convention on the right to a healthy environment have been unsuccessful (see Section III.A, paragraphs 31, 32 and 33), the current amount of case law in which the Court recognizes environmental issues as the underlying basis for the infringement of Convention rights has grown significantly. This proves that the environmental crisis has become one of the Court its priorities. The inclusion of an additional Protocol on the right to a safe, clean, healthy and sustainable environment would enable the Court to further adjudicate such particular cases within the existing framework.

130. Indeed, the advantages of the introduction of a Protocol lie in the official adoption of such a right, which serves as a minimum standard for Contracting Parties to take into account in their own national legislation. This does not only enhance the access to justice on national level, but also simplifies the procedure for individuals to file specific environmentally related complaints before the Court, by using the effective system that is currently already in place and ensuring the right is applicable and able to be invoked by individuals.

131. As the judgments of the Court are binding upon the respective States Parties, they have the ability to lead and alter government legislation and administrative practices in favour of environmental protection. “In the course of the implementation of these judgments by the Committee of Ministers (the supervisory mechanism of execution of judgments of the Council of Europe) additional obligations [can be] imposed on the respective States, requiring them to undertake the legal or practical measures (whether individual or general) necessary to ensure the ending of the situation that gave rise to the violation [...] and that

similar violations [are] prevented in the future.”<sup>438</sup> This system would “[guarantee] the effectiveness of the [right] and the lawfulness of political action.”<sup>439</sup>

132. Although the rights laid down in the Convention mainly require negative protection from States (first-generation rights), the Court has established a doctrine of positive obligations in relation to environmental harm, where (in case of Article 2) States are “obliged to take appropriate steps if there is a real and immediate risk to persons and the State in question is aware of that risk,”<sup>440</sup> and (in case of Article 8) “the positive obligation to take reasonable and appropriate measures to protect individuals against possible serious damage to their environment.”<sup>441</sup> The Court has experiences holding States responsible for their obligation to take positive action to protect the environment,<sup>442</sup> both in cases where environmental harm is directly caused by State activities as well as when such harm results from private sector activities.

133. Nevertheless, some challenges remain. The fact that the Court has increasingly adjudicated environmental issues merely proves the growing trend in international law towards the recognition of serious environmental problems but does not prove the existence of an independent substantive right to a healthy environment under the Convention.<sup>443</sup>

134. Introducing a Protocol which includes a substantive right to a healthy environment would require some alterations to the current manner in which the Court currently adjudicates environmental cases. Currently, complainants only have standing once the damage to the environment breaches their existing right(s) under the Convention. The Court has made clear that the Convention does not allow for *actio popularis*, as the right to individual application under Article 34 of the Convention requires the applicant him/herself to be a direct or indirect victim of a violation by a Contracting Party.<sup>444</sup> As such, the right to a healthy environment is not recognized to apply independently of those individual

<sup>438</sup> Natalia Kobylarz, ‘The European Court of Human Rights, an Underrated Forum for Environmental Litigation’ (2019), p. 114, in *Sustainable Management of Natural Resources Legal Instrument and Approaches* (eds. Helle Tegner Anker, Birgitte Egelund Olsen) (Intersentia Ltd, 2018)

<sup>439</sup> E. Lambert, ‘The Environment and Human Rights’ (27 February 2020) Introductory Report to the High-Level Conference Environmental Protection and Human Rights, p. 28, download available at: <<https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-and-the-environment>>

<sup>440</sup> *The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v. Stichting Urgenda* (Judgment, Supreme Court of the Netherlands) (20 December 2019), Case No. 19/00135 (English), p. 20, para. 5.2.2

<sup>441</sup> *Ibid.*, para. 5.2.3

<sup>442</sup> Final Declaration by the Georgian Presidency of the Committee of Ministers, Environmental Protection and Human Rights, High-Level Conference organised under the aegis of the Georgian Presidency of the Committee of Ministers (Strasbourg, 27 February 2020), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 18 March 2021

<sup>443</sup> E. Lambert, ‘The Environment and Human Rights’ (27 February 2020) Introductory Report to the High-Level Conference Environmental Protection and Human Rights, p. 12, download available at: <<https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-and-the-environment>>

<sup>444</sup> *Bursa Barosu Başkanlığı and others v. Turkey* (19 June 2018), ECtHR application no. 25680/05, para. 115



Convention rights and cannot be used to address general ecological damage nor “to defend the rights of future generations.”<sup>445</sup> Similarly, this Article does not allow for complaints to be brought directly against businesses.

135. Additionally, the Court can only defend the rights laid down in the Convention, where there is proof of serious, specific, and imminent danger to an individual. This threshold is high and makes it difficult to currently protect the environment outside of the notion of specific individual harm, and confer the status of “victim” to the applicant in case of risk of a potential future violation. Moreover, “the [Convention] will only be triggered when the level of environment protection falls below that necessary to maintain any of the guaranteed rights while lesser violation of human right go unpunished,” which means that environmental degradation not reaching this high threshold does not fall within the jurisdiction of the Court to adjudicate, which can make it difficult for individuals to obtain a remedy in case of lesser environmental harm.

136. The margin of appreciation might also make it difficult for individuals to obtain a remedy, as the Court might decide that due to the “social and technical aspects of environmental issues, [member States] are better placed than the [Court] to decide what exactly should be done to stop or reduce environmental harm or nuisance.”<sup>446</sup> Additionally, if the Court considers that the State has succeeded in striking a fair balance between the interest of the individual and the interest of the community as a whole (e.g., when the harmful act contributes to the general economy), the interference with the right of the individual might be justified.<sup>447</sup>

137. Lastly, although States have to adopt measures in the context of the execution of the European Court’s judgments and the positive obligation to adopt reasonable and adequate measures to protect the rights of the individual in environmental context,<sup>448</sup> the Court itself merely awards for financial compensation as a remedy for damages suffered by victims.<sup>449</sup>

---

<sup>445</sup> E. Lambert, ‘The Environment and Human Rights’ (27 February 2020) Introductory Report to the High-Level Conference Environmental Protection and Human Rights, p. 14, download available at: <<https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-and-the-environment>>

<sup>446</sup> *Ibid.*, p. 115

<sup>447</sup> *Ibid.*, pp. 116, 117

<sup>448</sup> Department for the Execution of the Judgments of the European Court of Human Rights, ‘Environment’ (October 2020) Thematic Factsheet, p. 2, download available at: <<https://www.coe.int/en/web/execution/thematic-factsheets#/%2256318151%22:3>>

<sup>449</sup> See Council of Europe, ‘Article 41 of the European Convention on Human Rights’ <<https://www.coe.int/en/web/execution/article-41>> accessed at 15 September 2020: “When the Court finds against a State and observes that the applicant has sustained damage, it awarded the applicant just satisfaction, that is to say a sum of money by way of compensation for that damage. [...] The purpose of the Court’s award in respect of damage is to compensate the applicant for the actual harmful consequences of a violation. [...] The principle with regard to pecuniary damage is that the applicant should be placed, as far as possible, in the position in which he or she would have been had the violation found not taken place, in other words, *restitutio in integrum*. This can involve compensation for both loss

In light of the collective and intergenerational nature of the right to a healthy environment however, mere monetary reparation to one individual does not suffice as an effective remedy, as the harm to the environment remains present for future generations.

138. Of course, this does not mean that an additional protocol to the Convention is ineffective by definition. It does seem to mean, however, that the current manner in which the Convention is used to protect human rights related to environmental harm needs to be (re)evaluated in such new Protocol to ensure that this new instrument can be designed as such that it provides adequate protection and added value to the existing system.

### *Option of an additional Protocol to the ESC*

139. As already addressed in paragraph 46, the Committee has continuously emphasized that the right to a healthy environment is part of Article 11 (the right to protection of health) of the Charter. The Committee acknowledged that the “protection and creation of a healthy environment [is] at the heart of the Charter’s system of guarantees,”<sup>450</sup> and that States have the obligation to adopt national environmental legislation to prevent air pollution at local and global level, supervise the correct implementation of standards, ensure environmental education and sufficiently assess health risks.<sup>451</sup> During the High-level Conference on Environmental Protection and Human Rights, Mr. Giuseppe Palmisano, the President of the Committee, acknowledged the increasing efforts by the Committee to reinforce environmental protection through the system of the Charter. He suggested that “in order to respond to the challenge that environmental issues pose to human rights,”<sup>452</sup> the Committee of Ministers could additionally consider making “arrangements for drafting a new protocol to the European Social Charter to incorporate (as has already been done in the Americas) environmental issues into human rights protection.”<sup>453</sup>

140. Similar to the advantages mentioned with respect to the Convention, the introduction of an Additional Protocol to the ESC, including the right to a safe, clean, healthy and sustainable environment, would recognize the individual and substantive right and serve as a minimum standard for the Contracting Parties to be adopted within their own national legislation. Progressive realization of the right by States could be effectively monitored

---

actually suffered (damnum emergens) and loss, or diminished gain, to be expected in the future (lucrum cessans). [...] The Court’s award in respect of non-pecuniary damage is intended to provide financial compensation for non-material harm, for example mental or physical suffering.”

<sup>450</sup> *ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland* (Decision on Admissibility and on Immediate Measures), (22 January 2019) ECSR Complaint No. 163/2018, para. 12

<sup>451</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits), ECSR Complaint No. 30/2005, para. 203

<sup>452</sup> G. Palmisano, President of the European Committee of Social Rights, Speech at the High-level Conference “Environmental Protection and Human Rights” (Strasbourg, 27 February 2020), download available at: <<https://rm.coe.int/palmisano-statement-environment-humanrights-27-02-20/16809cbfec>>

<sup>453</sup> *Ibid.*

under the State reporting system and addressed,<sup>454</sup> if ratified by the State in question, through collective complaints.<sup>455</sup> The involvement of (I)NGOs throughout the reporting and collective complaint process comes close to the idea of *actio popularis*, where relevant organizations can “bring complaints against States Parties to the [Charter] about alleged failures to give effect to the Charter adequately,”<sup>456</sup> and can advocate for vulnerable communities and future generations and share their experiences and expertise.

141. Besides the recognition of the right in domestic legal orders, the recognition of a substantive, independent right to a safe, clean, healthy and sustainable environment “would [...] make clear that the purpose of the provision is not only [to protect] against any environmental damage which is likely to affect human health, but also legally ensuring that protection against any environmental degradation is essential to the preservation of human well-being and dignity, also for future generations.”<sup>457</sup> Accordingly, this new Protocol could grant the Committee the ability to take measures “within the framework of an overall and coordinated approach, aimed at preserving the quality and integrity of the environment, and ensuring that future generations are not exposed to pollution or environmental conditions which may endanger their health or their existence itself.”<sup>458</sup>

142. “As regards the supervision mechanism, [...] the new Protocol could provide the possibility for States parties to accept the collective complaints procedure, limited to the substantial environmental provisions enshrined in the Protocol itself (and not with respect to all the accepted provisions of the Charter, as established by the 1995 Additional Protocol providing for a system of collective complaints). And, in such a case, it could also “automatically” extend the right to lodge complaints against the State party having accepted the procedure to representative national non-governmental organisations which have particular competence in the matters governed by the “environmental” Protocol (without

---

<sup>454</sup> “States present a report annually on a part of the provisions of the Charter, the provisions having been divided into four thematic groups. In this way, each provision of the Charter will be reported on once every four years.” Alongside those reports, (I)NGOs with participative status and certain organizations of employers and trade unions may submit additional information and commentary. See Governmental Committee of the European Social Charter, ‘New system for the presentation of reports on the application of the European Social Charter, 963 Meeting, 3 May 2006,’ (4 April 2006) Doc. CM(2006)53, para. 2; *Protocol Amending the European Social Charter* (1991), ETS No. 142, art. 1 on art. 23(1); C. Lougarre, ‘How can (I)NGOs engage with the European Committee of Social Rights under the monitoring procedures of the European Social Charter’ (2019) Council of Europe, p. 15, 16, download available at: <<https://www.coe.int/en/web/european-social-charter/ingos-engagement-with-ecsr>>

<sup>455</sup> *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints* (1995), ETS No. 1995

<sup>456</sup> C. Lougarre, ‘How can (I)NGOs engage with the European Committee of Social Rights under the monitoring procedures of the European Social Charter’ (2019) Council of Europe, p. 9, download available at: <<https://www.coe.int/en/web/european-social-charter/ingos-engagement-with-ecsr>>

<sup>457</sup> G. Palmisano, ‘The ESC System and Protection of the Environment: Potential and Future Prospects’ (2020), p. 8, CDDH-ENV(2021)05.

<sup>458</sup> *Ibid.*, p. 9

requiring to this effect an ad hoc declaration, as provided for by Article 2 of the 1995 Additional Protocol).”<sup>459</sup>

143. However, there has been some critique that the monitoring of the Committee is not thorough enough, as it has so far, in relation to the environment, relied on data provided by specialized agencies instead of its own scientific analysis.<sup>460</sup> In order to effectively monitor the implementation of this right, scientific evidence pointing to progress must both be submitted as well as analysed.

144. Additionally, although continuously encouraged to do so, the complaint procedure has not yet been ratified by all member States. However, the right to a safe, clean, healthy and sustainable environment will be best protected if States accept both the reporting procedure as well as, simultaneously, the collective complaint procedure. Only through the latter, can the collective interest be adequately represented.

145. Moreover, the Charter does not provide direct access to justice and remedies. Although the collective complaint procedure supports civil society involvement and the Committee has the ability to assess efforts made at national level with respect to the access to justice and remedies regarding social rights (and can provide binding conclusions and decisions), there is no judicial system that accepts complaints by affected individuals or groups.<sup>461</sup> Additionally, as many of the decisions and conclusions of the Committee are not directly enforceable in legal systems, the Committee relies on the readiness of States concerned to respect them and, besides Resolutions and Recommendations adopted by the Committee of Ministers, has no means to ensure enforcement.<sup>462</sup> Nor can complaints be brought directly against businesses.

146. Similar to what is said above in paragraph 137 with respect to the Convention: the challenges attached to the adoption of a Protocol containing the right to a safe, clean, healthy and sustainable environment under the Charter system is not necessarily a reason not to adopt it. It does mean, however, that the current manner in which the Charter is used

---

<sup>459</sup> *Ibid.*

<sup>460</sup> E. Lambert, ‘The Environment and Human Rights’ (27 February 2020) Introductory Report to the High-Level Conference Environmental Protection and Human Rights, p. 10, footnote 55, download available at: <https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-and-the-environment>

<sup>461</sup> See European Observatory of Working Life, ‘European Social Charter’ <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/european-social-charter> accessed at 14 April 2021 : “While the ECHR allows for individual complaints to the European Court of Human Rights, the European Social Charter relies instead on supervision of practices through scrutiny of the regular reports submitted by the states to a committee of independent experts, the European Committee of Social Rights.”

<sup>462</sup> Council of Europe, ‘The Charter in four steps’ <https://www.coe.int/en/web/european-social-charter/about-the-charter> accessed at 14 April 2021

to protect human rights related to a healthy environment needs to be (re)evaluated in this new Protocol to ensure that this new instrument can be designed as such that it provides adequate protection and added-value to the existing system.

### *Option of an independent instrument*

147. Another suggestion made during the High-level Conference is the option of adoption of a new European binding pact on environmental human rights including the various rights, responsibilities and principles above, accompanied by a monitoring mechanism, preferably judicial with a European Environmental Court, or, failing that, an Ombudsman or a High Commissioner for the Environment.<sup>463</sup>

148. The advantages to the adoption of a new instrument are the possibility to tailor the content of the document and its enforcement mechanism to cover the gaps in the current status quo and not strictly limit it to the existing systems governing civil and political rights or social and economic rights (first- and second-generation rights), where the right to a safe, clean, healthy and sustainable environment does not fully seem to fit in (as it is a right more suitable to the third-generation of rights). As it is not attached to pre-existing agreements, such as the Convention and the Charter, there is more room to introduce an independent definition for the right to a to a safe, clean, healthy and sustainable environment, including a collective and intergenerational aspect supplemented by environmental principles and a broad *locus standi*. Additionally, a new binding agreement, as mentioned in the paragraph above, can provide for its own specialized enforcement mechanism (e.g., Court, Tribunal, High Commissioner or Ombudsman), “assisted by experts and supported by an independent secretariat responsible for handling complaints,”<sup>464</sup> which is capable of adequately responding to the issue in question, in light of the independent substantive and procedural rights laid down in the agreement.

149. Of course, however, the elaboration of an independent treaty is a more complex task than the adoption of a protocol, and a certain number of States might not be willing to embark on the adoption and/or ratification of such instrument at all. The solution to this would be the drafting of an enlarged partial agreement, which would allow committed States who are ready to cooperate on this matter to move ahead. This offers a useful flexibility and paves the way for some tangible results, which might have a positive ripple effect.<sup>465</sup> States who

---

<sup>463</sup> E. Lambert, ‘The Environment and Human Rights’ (27 February 2020) Introductory Report to the High-Level Conference Environmental Protection and Human Rights, p. 29, download available at: <<https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-and-the-environment>>

<sup>464</sup> *Ibid.*

<sup>465</sup> *Ibid.*

would not be ready at the time of the formulation of the treaty, remain free to accede such a treaty at a later date.

### Option of enhancing the implementation of existing standards

#### *Option of a Committee of Ministers' Declaration*

150. As already mentioned in paragraph 68, the member States in the UN working group on the Global Pact for the environment, recommended that a political declaration be considered and prepared for adoption in the fifth session of the United Nations Environment Assembly which took place in February 2021.<sup>466</sup> Although this political declaration is not yet published, the working group provided the United Nations Environment Assembly with recommendations for consideration of such a declaration, “in the context of the commemoration of the creation of the United Nations Environment Programme by the United Nations Conference on the Human Environment, held in Stockholm from 5 to 16 June 1972, with a view to strengthening the implementation of international environmental law and international environmental governance.”<sup>467</sup>

151. Those recommendations “call for renewed efforts at all levels to enhance the implementation of existing obligations and commitments under international environmental law, stressing the importance of enhanced ambition regarding means of implementation,”<sup>468</sup> and “recognize the role of discussions on principles of international environmental law in enhancing the implementation of international environmental law.”<sup>469</sup>

152. Additionally, the working group recommends inviting the scientific community “to further their work on interconnected and cross-cutting issues by sharing information among the leading scientific, technical and technological bodies that inform the work of multilateral environmental agreements and environmental processes,”<sup>470</sup> and the governing bodies and secretariats of multilateral environmental agreements “to increase their efforts to promote policy coherence”<sup>471</sup> and “to enhance cooperation and collaboration.”<sup>472</sup>

---

<sup>466</sup> UN General Assembly, ‘Report of the ad hoc open-ended working group established pursuant to General Assembly resolution 72/277’ (13 June 2019), UN Doc. A/AC.289/6/Rev.2, p. 11, F “Recommendations”, para. F.3. 55 (b); UN General Assembly Resolution 73/333 (5 September 2019), UN Doc. A/RES/73/333, para. 1

<sup>467</sup> UN General Assembly, ‘Report of the ad hoc open-ended working group established pursuant to General Assembly resolution 72/277’ (13 June 2019), UN Doc. A/AC.289/6/Rev.2, p. 11, F “Recommendations”, para. F.3. 55 (b)

<sup>468</sup> *Ibid.*, p. 10, F “Recommendations”, F.2.(b)

<sup>469</sup> *Ibid.*, para. F.2.(c)

<sup>470</sup> *Ibid.*, para. F.2.(d)

<sup>471</sup> *Ibid.*, para. F.2.(e)

<sup>472</sup> *Ibid.*, para. F.2.(f)

153. Moreover, amongst other things, the recommendations encourage States Members to the United Nations to ratify “multilateral environmental agreements and to effectively implement them,”<sup>473</sup> “strengthen, where needed, environmental laws, policies and regulatory frameworks at the national level, [...] including in the administrative and justice sectors in accordance with national legal systems, while acknowledging the importance of international cooperation in supporting and complementing national actions,”<sup>474</sup> and actively and meaningfully engage “all relevant stakeholders at all levels in the different forums related to the implementation of international environment law and environment-related instruments.”<sup>475</sup>

154. Similarly, the Declaration drawing up the conclusions of the High-Level Conference on “Environmental Protection and Human Rights” on 27 February 2020, amongst other things, recognized that “the protection of the environment and the protection of human rights are interconnected,”<sup>476</sup> and that “the Council of Europe has a key role to play in mainstreaming the environmental dimension into human rights and pursue a rights-based approach to environmental protection.”<sup>477</sup> Within this declaration, it is suggested that “the [Court] and the [Committee] are encouraged to further substantiate their case-law and give priority consideration to complaints involving issues of environmental protection,”<sup>478</sup> and that “when such issues come to the attention of the Committee of Ministers under the Convention and the Charter, the implementation measures to be taken by Member States should be considered as a matter of priority.”<sup>479</sup>

155. In light hereof, it might be considered inviting the Committee of Ministers to adopt its own declaration in this regard.

### *Option of a Council of Europe Strategy*

156. Moreover, the above mentioned Declaration suggested that the Council of Europe “could contemplate launching a Council of Europe Strategy on the Environment and Human Rights with the aim of supporting Member States in meeting their obligations in the field.”<sup>480</sup> “This strategy should set clear and enforceable targets, and devise tools for exchanging

---

<sup>473</sup> *Ibid.*, para. F.2.(h)

<sup>474</sup> *Ibid.*, para. F.2.(e)

<sup>475</sup> *Ibid.*, para. F.2.(k)

<sup>476</sup> Final Declaration by the Georgian Presidency of the Committee of Ministers, Environmental Protection and Human Rights, High-Level Conference organised under the aegis of the Georgian Presidency of the Committee of Ministers (Strasbourg, 27 February 2020), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 2 March 2021

<sup>477</sup> *Ibid.*

<sup>478</sup> *Ibid.*

<sup>479</sup> *Ibid.*

<sup>480</sup> *Ibid.*

good practices, challenges and lessons learnt [and] within the framework of this strategy the following actions should be envisaged”<sup>481</sup> : awareness-raising and professional training; targeted cooperation programmes; development of national policies and actions; political coordination among member States and making Council of Europe’s activities more environmentally conscious.<sup>482</sup>

157. In a Joint Declaration on human rights and the environment the outgoing (Georgia) and incoming (Greece and Germany) presidencies of the Committee of Ministers, similarly recognized, *inter alia*, “the growing threats to the climate and the environment and the urgent need to act in an ambitious and concerted manner at the global level to better ensure their sustainability and protection,”<sup>483</sup> and that “further the potential of the Council of Europe instruments in this field”<sup>484</sup> should be considered.

## **E. Short chapter recap**

158. Considering the developments related to human rights and the environment at national and international level, and the key role that the Council of Europe could play in pursuing a rights-based approach to environmental protection, member States of the Council of Europe are asked to intelligently combine existing standards and practices.

159. Currently, the CDDH is in the process of updating its Manual on Human Rights and the Environment, which includes the emerging principles on environmental protection in the case law of the Court and the relevant reports and decisions of the Committee. Additionally, the CDDH is preparing a new non-binding instrument which recalls the existing standards and practices in the field of human rights and the environment.

160. At the High-Level Conference on Environmental Protection and Human Rights which was organized by the Georgian Presidency of the Committee of Ministers in February 2020, it was additionally suggested that, due to the existing rights and developments at different levels as well as the urgency of the current environmental crisis, member States could additionally, as a second step, consider the advisability of adopting a binding European instrument on human rights and the environment to more effectively ensure the protection of human rights and the environment. In order for this instrument to adequately protect the right to a safe, clean, healthy and sustainable environment, this right should be, *inter alia*, recognized as both an individual and collective right. Preferably, the instrument should

---

<sup>481</sup> *Ibid.*

<sup>482</sup> *Ibid.*

<sup>483</sup> Chairmanship of the Committee of Ministers, *Joint Declaration on human rights and the environment by the outgoing and incoming Presidencies of the Committee of Ministers*, Decl(15/05/2020)

<sup>484</sup> *Ibid.*



additionally enable a broad *locus standi* or give access to limited *actio popularis*, include restorative remedies, monitor complaints against businesses, include other important substantive and procedural rights related to the environment and have an effective monitoring mechanism. The different suggested formats for the exploration of such instrument include an additional Protocol to the Convention, and additional Protocol to the Charter or via the adoption of new (partial) agreement.

161. Other suggested work to further support the protection of human rights and the environment includes the enhancement of the implementation of existing standards through the adoption of a declaration by the Committee of Ministers and the launch of an Council of Europe strategy on environment and human rights.

## APPENDIX 1

### Selection of proposed international principles on human rights and environmental protection

\* \* \*

*Our Common Future, Annex 1: Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development adopted by the WCED Experts Group on Environmental Law*<sup>485</sup>

#### I. General Principles, Rights, and Responsibilities

##### Fundamental Human Right

1. All human beings have the fundamental right to an environment adequate for their health and well-being.

##### Inter-Generational Equity

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

##### Conservation and Sustainable Use

3. States shall maintain ecosystems and ecological processes essential for the functioning of the biosphere, shall preserve biological diversity, and shall observe the principle of optimum sustainable yield in the use of living natural resources and ecosystems.

##### Environmental Standards and Monitoring

4. States shall establish adequate environmental protection standards and monitor changes in and publish relevant data on environmental quality and resource use.

##### Prior Environmental Assessments

---

<sup>485</sup> United Nations, 'Report of the World Commission on Environment and Development: Our Common Future' (Brundtland Report) (1987), p. 286, download available at: <<http://www.environmentandsociety.org/mml/un-world-commission-environment-and-development-ed-report-world-commission-environment-and>>

5. States shall make or require prior environmental assessments of proposed activities which may significantly affect the environment or use of a natural resource.

#### **Prior Notification, Access, and Due Process**

6. States shall inform in a timely manner all persons likely to be significantly affected by a planned activity and to grant them equal access and due process in administrative and judicial proceedings.

#### **Sustainable Development and Assistance**

7. States shall ensure that conservation is treated as an integral part of the planning and implementation of development activities and provide assistance to other States, especially to developing countries, in support of environmental protection and sustainable development.

#### **General Obligation to Cooperate**

8. States shall cooperate in good faith with other States in implementing the preceding rights and obligations.

### **II. Principles, Rights and Obligations Concerning Transboundary Natural Resources and Environmental Interferences**

#### **Reasonable and Equitable Use**

9. States shall use transboundary natural resources in a reasonable and equitable manner.

#### **Prevention and Abatement**

10. States shall prevent or abate any transboundary environmental interference which could cause or causes significant harm (but subject to certain exceptions provided for in #11 and #12 below).

#### **Strict Liability**

11. States shall take all reasonable precautionary measures to limit the risk when carrying out or permitting certain dangerous but beneficial activities and shall ensure that compensation is provided should substantial transboundary harm occur even when the activities were not known to be harmful at the time they were undertaken.

**Prior Agreements When Prevention Costs Greatly Exceed Harm**

12. States shall enter into negotiations with the affected State on the equitable conditions under which the activity could be carried out when planning to carry out or permit activities causing transboundary harm which is substantial but far less than the cost of prevention. (If no agreement can be reached, see Art. 22).

**Non-Discrimination**

13. States shall apply as a minimum at least the same standards for environmental conduct and impacts regarding transboundary natural resources and environmental interferences as are applied domestically (i.e., do not do to others what you would not do to your own citizens).

**General Obligation to Cooperate on Transboundary Environmental Problems**

14. States shall cooperate in good faith with other States to achieve optimal use of transboundary natural resources and effective prevention or abatement of transboundary environmental interferences.

**Exchange of Information**

15. States of origin shall provide timely and relevant information to the other concerned States regarding transboundary natural resources or environmental interferences.

**Prior Assessment and Notification**

16. States shall provide prior and timely notification and relevant information to the other concerned States and shall make or require an environmental assessment of planned activities which may have significant transboundary effects.

**Prior Consultations**

17. States of origin shall consult at an early stage and in good faith with other concerned States regarding existing or potential transboundary interferences with their use of a natural resource or the environment.

**Cooperative Arrangements for Environmental Assessment and Protection**

18. States shall cooperate with the concerned States in monitoring, scientific research and standard setting regarding transboundary natural resources and environmental interferences.

### **Emergency Situations**

19. States shall develop contingency plans regarding emergency situations likely to cause transboundary environmental interferences and shall promptly warn, provide relevant information to and co-operate with concerned States when emergencies occur.

### **Equal Access and Treatment**

20. States shall grant equal access, due process and equal treatment in administrative and judicial proceedings to all persons who are or may be affected by transboundary interferences with their use of a natural resource or the environment.

### **III. State Responsibility**

21. States shall cease activities which breach an international obligation regarding the environment and provide compensation for the harm caused.

### **IV. Peaceful Settlement of Disputes**

22. States shall settle environmental disputes by peaceful means. If mutual agreement on a solution or on other dispute settlement arrangements is not reached within 18 months, the dispute shall be submitted to conciliation and, if unresolved thereafter, to arbitration or judicial settlement at the request of any of the concerned States.

\* \* \*

## ***Global Pact for the Environment (preliminary draft)***<sup>486</sup>

[...]

### **Article 1**

#### **Right to an ecologically sound environment**

Every person has the right to live in an ecologically sound environment adequate for their health, well-being, dignity, culture and fulfilment.

### **Article 2**

#### **Duty to take care of the environment**

---

<sup>486</sup> Les Club des Juristes, Draft Project 'Global Pact for the Environment' (Paris, 24 June 2017), download available at: <https://www.leclubdesjuristes.com/wp-content/uploads/2017/05/Draft-project-of-the-Global-Pact-for-the-Environment-24-June-2017.pdf>

Every State or international institution, every person, natural or legal, public or private, has the duty to take care of the environment. To this end, everyone contributes at their own levels to the conservation, protection and restoration of the integrity of the Earth's ecosystem.

### **Article 3**

#### **Integration and sustainable development**

Parties shall integrate the requirements of environmental protection into the planning and implementation of their policies and national and international activities, especially in order to promote the fight against climate change, the protection of oceans and the maintenance of biodiversity.

They shall pursue sustainable development. To this end, they shall ensure the promotion of public support policies, patterns of production and consumption both sustainable and respectful of the environment.

### **Article 4**

#### **Intergenerational Equity**

Intergenerational equity shall guide decisions that may have an impact on the environment.

Present generations shall ensure that their decisions and actions do not compromise the ability of future generations to meet their own needs.

### **Article 5**

#### **Prevention**

The necessary measures shall be taken to prevent environmental harm.

The Parties have the duty to ensure that activities under their jurisdiction or control do not cause damage to the environments of other Parties or in areas beyond the limits of their national jurisdiction.

They shall take the necessary measures to ensure that an environmental impact assessment is conducted prior to any decision made to authorise or engage in a project, an activity, a plan, or a program that is likely to have a significant adverse impact on the environment.

In particular, States shall keep under surveillance the effect of an above-mentioned project, activity, plan, or program which they authorise or engage in, in view of their obligation of due diligence.

### **Article 6**

### **Precaution**

Where there is a risk of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing the adoption of effective and proportionate measures to prevent environmental degradation.

### **Article 7 Environmental Damages**

The necessary measures shall be taken to ensure an adequate remediation of environmental damages.

Parties shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Parties shall promptly cooperate to help concerned States.

### **Article 8 Polluter-Pays**

Parties shall ensure that prevention, mitigation and remediation costs for pollution, and other environmental disruptions and degradation are, to the greatest possible extent, borne by their originator.

### **Article 9 Access to information**

Every person, without being required to state an interest, has a right of access to environmental information held by public authorities.

Public authorities shall, within the framework of their national legislations, collect and make available to the public relevant environmental information.

### **Article 10 Public participation**

Every person has the right to participate, at an appropriate stage and while options are still open, to the preparation of decisions, measures, plans, programmes, activities, policies and normative instruments of public authorities that may have a significant effect on the environment.

### **Article 11 Access to environmental justice**

Parties shall ensure the right of effective and affordable access to administrative and judicial procedures, including redress and remedies, to challenge acts or omissions of public

authorities or private persons which contravene environmental law, taking into consideration the provisions of the present Pact.

## **Article 12**

### **Education and training**

The Parties shall ensure that environmental education, to the greatest possible extent, is taught to members of the younger generation as well as to adults, in order to inspire in everyone a responsible conduct in protecting and improving the environment.

The Parties shall ensure the protection of freedom of expression and information in environmental matters. They support the dissemination by mass media of information of an educational nature on ecosystems and on the need to protect and preserve the environment.

## **Article 13**

### **Research and innovation**

The Parties shall promote, to the best of their ability, the improvement of scientific knowledge of ecosystems and the impact of human activities. They shall cooperate through exchanges of scientific and technological knowledge and by enhancing the development, adaptation, dissemination and transfer of technologies respectful of the environment, including innovative technologies.

## **Article 14**

### **Role of non-State actors and subnational entities**

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

## **Article 15**

### **Effectiveness of environmental norms**

The Parties have the duty to adopt effective environmental laws, and to ensure their effective and fair implementation and enforcement.

## **Article 16**

### **Resilience**

The Parties shall take necessary measures to maintain and restore the diversity and capacity of ecosystems and human communities to withstand environmental disruptions and degradation and to recover and adapt.

## **Article 17**

### **Non-regression**



The Parties and their sub-national entities refrain from allowing activities or adopting norms that have the effect of reducing the global level of environmental protection guaranteed by current law.

### **Article 18 Cooperation**

In order to conserve, protect and restore the integrity of the Earth's ecosystem and community of life, Parties shall cooperate in good faith and in a spirit of global partnership for the implementation of the provisions of the present Pact.

### **Article 19 Armed conflicts**

States shall take pursuant to their obligations under international law all feasible measures to protect the environment in relation to armed conflicts.

### **Article 20 Diversity of national situations**

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special attention.

Account shall be taken, where appropriate, of the Parties' common but differentiated responsibilities and respective capabilities, in light of different national circumstances.

[...]

\* \* \*

### ***Framework Principles on Human Rights and the Environment (2018)***<sup>487</sup>

1. States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.
2. States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.
3. States should prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.

---

<sup>487</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, download available at: <<https://www.right-docs.org/doc/a-hrc-37-59/>>

4. States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.
5. States should respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters.
6. States should provide for education and public awareness on environmental matters.
7. States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request.
8. To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.
9. States should provide for and facilitate public participation in decision-making related to the environment, and take the views of the public into account in the decision-making process.
10. States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.
11. States should establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and otherwise respect, protect and fulfil human rights.
12. States should ensure the effective enforcement of their environmental standards against public and private actors.
13. States should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights.
14. States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.
15. States should ensure that they comply with their obligations to indigenous peoples and members of traditional communities, including by:
  - (a) Recognizing and protecting their rights to the lands, territories and resources that they have traditionally owned, occupied or used;
  - (b) Consulting with them and obtaining their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources;
  - (c) Respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources;

- (d) Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources.
16. States should respect, protect and fulfil human rights in the actions they take to address environmental challenges and pursue sustainable development.

## APPENDIX 2

### Extracts from regional human rights instruments

\* \* \*

#### ***African Charter on Human and People's Rights (28 June 1981)***<sup>488</sup>

##### Article 24

All peoples shall have the right to a general satisfactory environment favourable to their development.

\* \* \*

#### ***African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol, 2003)***<sup>489</sup>

##### Article 18 - Right to a Healthy and Sustainable Environment

1. Women shall have the right to live in a healthy and sustainable environment.
2. States Parties shall take all appropriate measures to:
  - a) ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels;
  - b) promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women's access to, and participation in their control;
  - c) protect and enable the development of women's indigenous knowledge systems;
  - d) regulate the management, processing, storage and disposal of domestic waste;
  - e) ensure that proper standards are followed for the storage, transportation and disposal of toxic waste.

\* \* \*

---

<sup>488</sup> Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")* (27 June 1981) CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Art. 24, download available at: <[https://achpr.org/public/Document/file/English/banjul\\_charter.pdf](https://achpr.org/public/Document/file/English/banjul_charter.pdf)>

<sup>489</sup> Additional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (11 July 2003), Art. 18, download available at: <<https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa>>

***Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol, 17 November 1988)***<sup>490</sup>

Article 11 - Right to a Healthy Environment

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

\* \* \*

***Arab Charter on Human Rights (22 May 2004)***<sup>491</sup>

Article 38

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

\* \* \*

***ASEAN Human Rights Declaration (18 November 2012)***<sup>492</sup>

28. Every person has the right to an adequate standard of living for himself or herself and his or her family including:

[...]

- e. The right to safe drinking water and sanitation;
- f. The right to a safe, clean and sustainable environment.

---

<sup>490</sup> *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)* (1988), OAS TS No. 69, Art. 11, <<http://www.oas.org/juridico/English/Treaties/a-52.html>> accessed at 14 April 2021

<sup>491</sup> *Arab Charter on Human Rights* (22 May 2004), Art. 38, download available at: <<https://www.right-to-education.org/resource/arab-charter-human-rights-revised>>

<sup>492</sup> *ASEAN Human Rights Declaration (AHRD)* (18 November 2012), Art. 28(f), <<https://asean.org/asean-human-rights-declaration/>> accessed at 14 April 2021

### APPENDIX 3

#### Protection of the environment at constitutional level<sup>493</sup>

(as of January 2021)

\* \* \*

Albania	<p><b>Article 59:</b> 1. The state, within its constitutional powers and the means at its disposal, aims to supplement private initiative and responsibility with: <b>d.</b> a healthy and ecologically adequate environment for the present and future generations;</p>
Andorra	<p><b>Preamble:</b> [...] Willing to bring their collaboration and effort to all the common causes of mankind, and especially to those of preserving the integrity of the Earth and guaranteeing an environment fit for life for the coming generations,</p> <p><b>Article 31:</b> The State has the task of ensuring the rational use of the land and of all natural resources, so as to guarantee a fitting quality of life for all and, for the sake of future generations, to restore and maintain a reasonable ecological balance in the atmosphere, water and land, as well as to protect the autochthonous flora and fauna.</p>
Armenia	<p><b>Article 10:</b> The state shall ensure the protection and reproduction of the environment and the reasonable utilization of natural resources.</p> <p><b>Article 33.2:</b> Everyone shall have the right to live in an environment favorable to his/her health and well-being and shall be obliged to protect and improve it in person or jointly with others.</p> <p>The public officials shall be held responsible for hiding information on environmental issues and denying access to it.</p> <p><b>Article 48:</b></p>

<sup>493</sup> This provisional information has been assembled by the Secretariat, based on the Appendix on good practices in the Manual, States own websites - English version of their constitutions, and the UN General Assembly, 'Right to a healthy environment: good practices. 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, Annex II. Please also see the present document, Chapter IV, Part A, paragraphs 84 to 86, including the information provided in the footnotes.

	<p>The basic tasks of the state in the economic, social and cultural spheres are:</p> <p><b>10)</b> to pursue the environmental security policy for present and future generations;</p>
Austria	
Azerbaijan	<p><b>Article 39. Right to live in healthy environment:</b></p> <p>I. Everyone has the right to live in healthy environment.</p> <p>II. Everyone has the right to gain information about true ecological situation and to get compensation for damage done to his/her health and property because of violation of ecological requirements.</p> <p><b>Article 78. Protection of environment:</b></p> <p>Every citizen is responsible for protection of environment.</p>
Belgium	<p><b>Article 23:</b></p> <p>Everyone has the right to lead a life in keeping with human dignity.</p> <p>[...]</p> <p>These rights include among others:</p> <p><b>4°</b> the right to the protection of a healthy environment;</p>
Bosnia and Herzegovina	
Bulgaria	<p><b>Art. 15.:</b></p> <p>The Republic of Bulgaria shall ensure the protection and reproduction of the environment, the conservation of living Nature in all its variety, and the sensible utilization of the country's natural and other resources.</p> <p><b>Art. 55.:</b></p> <p>Everyone shall have the right to a healthy and favorable environment corresponding to established standards and norms. They shall protect the environment.</p>
Croatia	<p><b>Article 3:</b></p> <p>Freedom, equal rights, national and gender equality, peace-making, social justice, respect for human rights, inviolability of ownership, conservation of nature and the environment, the rule of law and a democratic multiparty system are the highest values of the constitutional order of the Republic of Croatia and the basis for interpreting the Constitution.</p> <p><b>Article 52:</b></p> <p>The sea, seashore, islands, waters, air space, mineral resources, and other natural resources, as well as land, forests, flora and fauna, other components of the natural environment, real estate and items of particular cultural, historical, economic or ecological significance which are specified by law to be of interest to the Republic of Croatia shall enjoy its special protection.</p>

	<p><b>Article 69:</b> [...] The state shall ensure conditions for a healthy environment.</p> <p>Everyone shall, within the scope of his/her powers and activities, accord particular attention to the protection of human health, nature and the human environment.</p>
Cyprus	
Czech Republic	<p><b>Preamble:</b> [...] Resolved to guard and develop together the natural and cultural, material and spiritual wealth handed down to us,</p> <p><b>Article 7:</b> The state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth.</p> <p><b>Article 35:</b> (1). Everyone has the right to a favorable environment. (2). Everyone has the right to timely and complete information about the state of the environment and natural resources. (3). No one may, in exercising her rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent designated by law.</p>
Denmark	
Estonia	<p><b>Article 53:</b> Everyone has a duty to preserve the human and natural environment and to compensate for damage caused to the environment by him or her. The procedure for compensation shall be provided by law.</p>
Finland	<p><b>Section 20 - Responsibility for the environment:</b> Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone.</p> <p>The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.</p>
France	<p><b>Attached to the French Constitution - CHARTER FOR THE ENVIRONMENT:</b> The French People, Having considered that Natural resources and equilibria have conditioned the emergence of mankind;</p>



	<p>The future and very existence of mankind are inextricably linked with its natural environment;</p> <p>The environment is the common heritage of all human beings;</p> <p>Man exerts ever-increasing influence over the conditions for life and over his own evolution;</p> <p>Biological diversity, the fulfilment of the individual and the progress of human societies are affected by certain types of consumption or production and by excessive exploitation of natural resources;</p> <p>The safeguarding of the environment is a goal to be pursued in the same way as the other fundamental interests of the Nation;</p> <p>In order to ensure sustainable development, choices designed to meet the needs of the present generation should not jeopardise the ability of future generations and other peoples to meet their own needs,</p> <p>Hereby proclaim:</p> <p><b>Art 1</b> – Each person has the right to live in a balanced environment which shows due respect for health.</p> <p><b>Art 2</b> – Each person has a duty to participate in preserving and enhancing the environment.</p> <p><b>Art 3</b> – Each person shall, in the conditions provided for by law, foresee and avoid the occurrence of any damage which he or she may cause to the environment or, failing that, limit the consequences of such damage.</p> <p><b>Art 4</b> – Each person shall be required, in the conditions provided for by law, to contribute to the making good of any damage he or she may have caused to the environment.</p> <p><b>Art 5</b> – When the occurrence of any damage, albeit unpredictable in the current state of scientific knowledge, may seriously and irreversibly harm the environment, public authorities shall, with due respect for the principle of precaution and the areas within their jurisdiction, ensure the implementation of procedures for risk assessment and the adoption of temporary measures commensurate with the risk involved in order to deal with the occurrence of such damage.</p> <p><b>Art 6</b> – Public policies shall promote sustainable development. To this end they shall reconcile the protection and enhancement of the environment with economic development and social progress.</p> <p><b>Art 7</b> – Each person has the right, in the conditions and to the extent provided for by law, to have access to any information pertaining to the environment in the possession of public bodies and to participate in the public decision-making process likely to affect the environment.</p> <p><b>Art 8</b> – Education and training with regard to the environment shall contribute to the exercising of the rights and duties set out in this Charter.</p> <p><b>Art 9</b> – Research and innovation shall contribute to the preservation and development of the environment.</p>
--	---

	<b>Art 10</b> – This Charter shall inspire France’s actions at both a European and an international level.
Georgia	<p><b>Article 35:</b></p> <p>3. Everyone has the right to live in a healthy environment and use natural and cultural surroundings. Everyone is obliged to protect the natural and cultural surroundings.</p> <p>4. The state guarantees the protection of nature and the rational use of it to ensure a healthy environment, corresponding to the ecological and economic interests of society, and taking into account the interests of current and future generations.</p>
Germany	<p><b>Article 20a [Protection of the natural foundations of life and animals]:</b></p> <p>Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.</p>
Greece	<p><b>Article 24:</b></p> <p>1. The protection of the natural and cultural environment constitutes a duty of the State and a right of every person. The State is bound to adopt special preventive or repressive measures for the preservation of the environment in the context of the principle of sustainable development. Matters pertaining to the protection of forests and forest expanses in general shall be regulated by law. The compilation of a forest registry constitutes an obligation of the State. Alteration of the use of forests and forest expanses is prohibited, except where agricultural development or other uses imposed for the public interest prevail for the benefit of the national economy.</p>
Hungary	<p><b>Preamble:</b></p> <p>[...]</p> <p>We commit to promoting and safeguarding our heritage, our unique language, Hungarian culture, the languages and cultures of nationalities living in Hungary, along with all man-made and natural assets of the Carpathian Basin. We bear responsibility for our descendants; therefore, we shall protect the living conditions of future generations by making prudent use of our material, intellectual and natural resources.</p> <p><b>Article P:</b></p> <p>All natural resources, especially agricultural land, forests and drinking water supplies, biodiversity – in particular native plant and animal species – and cultural assets shall form part of the nation’s common heritage, and the State and every person shall be obliged to protect, sustain and preserve them for future generations.</p> <p><b>Article XXI:</b></p>

	<p>1. Hungary shall recognise and enforce the right of every person to a healthy environment.</p> <p>2. A person who causes any damage to the environment shall be obliged to restore it or to bear all costs of restoration as defined by law.</p> <p>3. No pollutant waste shall be brought into Hungary for the purpose of dumping.</p>
Iceland	
Ireland	
Italy	
Latvia	<p><b>Preamble:</b> [...] Each individual takes care of oneself, one's relatives and the common good of society by acting responsibly toward other people, future generations, the environment and nature.</p> <p><b>Chapter VIII Fundamental Human Rights:</b> <b>115.</b> The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.</p>
Liechtenstein	
Lithuania	<p><b>Article 53:</b> [...] The State and each person must protect the environment from harmful influences.</p> <p><b>Article 54:</b> The State shall take care of the protection of the natural environment, wildlife and plants, individual objects of nature and areas of particular value and shall supervise a sustainable use of natural resources, their restoration and increase. The destruction of land and the underground, the pollution of water and air, radioactive impact on the environment as well as depletion of wildlife and plants shall be prohibited by law.</p>
Luxembourg	<p><b>Article 11bis:</b> The State guarantees the protection of the human and cultural environment, and works for the establishment of a durable equilibrium between the conservation of nature, in particular its capacity for renewal, and the satisfaction of the needs of present and future generations.</p>
Malta	
Monaco	
Montenegro	<p><b>Preamble:</b> [...]</p>

	<p>The conviction that the state is responsible for the preservation of nature, sound environment, sustainable development, balanced development of all its regions and the establishment of social justice;</p> <p><b>Article 23:</b> Everyone shall have the right to a sound environment.</p> <p>Everyone shall have the right to receive timely and full information about the status of the environment, to influence the decision-making regarding the issues of importance for the environment, and to legal protection of these rights.</p> <p>Everyone, the state in particular, shall be bound to preserve and promote the environment</p>
Netherlands	<p><b>Article 21:</b> It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment.</p>
North Macedonia	<p><b>Article 8:</b> The fundamental values of the constitutional order of the Republic of North Macedonia are: [...] - proper urban and rural planning to promote a congenial human environment, as well as ecological protection and development;</p> <p><b>Article 43:</b> Everyone has the right to a healthy environment to live in. Everyone is obliged to promote and protect the environment. The Republic provides conditions for the exercise of the right of citizens to a healthy environment.</p>
Norway	<p><b>Article 112.:</b> Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well.</p> <p>In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out.</p> <p>The authorities of the state shall take measures for the implementation of these principles.</p>
Poland	<p><b>Article 5:</b></p>

	<p>The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.</p> <p><b>Article 68:</b> 4. Public authorities shall combat epidemic illnesses and prevent the negative health consequences of degradation of the environment.</p> <p><b>Article 74:</b> 1. Public authorities shall pursue policies ensuring the ecological security of current and future generations. 2. Protection of the environment shall be the duty of public authorities. 3. Everyone shall have the right to be informed of the quality of the environment and its protection. 4. Public authorities shall support the activities of citizens to protect and improve the quality of the environment.</p> <p><b>Article 86:</b> Everyone shall care for the quality of the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by statute.</p>
Portugal	<p><b>Article 9 (Fundamental tasks of the state):</b> d) To promote the people's well-being and quality of life and real equality between the Portuguese, as well as the effective implementation of economic, social, cultural and environmental rights by means of the transformation and modernisation of economic and social structures; e) To protect and enhance the Portuguese people's cultural heritage, defend nature and the environment, preserve natural resources and ensure correct town and country planning;</p>
Republic of Moldova	<p><b>Article 37. Right to a healthy environment:</b> (1) Every human being shall have the right to live in an ecologically safe and healthy environment, to consume healthy food products and to use harmless household appliances. (2) The State shall guarantee to anyone the right of free access and dissemination of the truthful information related to the environment state, living and working conditions, and the quality of food products and household appliances. (3) Concealment or forgery of the information regarding the factors detrimental to human health shall be prohibited by law. (4) Natural and legal entities shall be held liable for the damages caused to a person's health and property due to ecological trespasses.</p> <p><b>Article 59. Protection of the environment and monuments:</b></p>

	The protection of environment and the preservation of historical and cultural monuments shall represent a duty ascribed to each citizen
Romania	<p><b>Article 35 Right to a healthy environment:</b>  <b>(1)</b> The State shall acknowledge the right of every person to a healthy, well preserved and balanced environment.  <b>(2)</b> The State shall provide the legislative framework for the exercise of such right.  <b>(3)</b> Natural and legal entities shall be bound to protect and improve the environment.</p> <p><b>Article 135 Economy:</b>  <b>(2)</b> The State must secure:  <b>e)</b> environmental protection and recovery, as well as preservation of the ecological balance;</p>
Russian Federation	<p><b>Article 42:</b>  Everyone shall have the right to a favourable environment, reliable information on the state of the environment and compensation for damage caused to his (her) health and property by violations of environmental laws.</p> <p><b>Article 58:</b>  Everyone shall have a duty to preserve nature and the environment and to treat natural resources with care.</p>
San Marino	<p><b>Article 10:</b>  [...]  The Republic shall safeguard the historical and artistic heritage and the natural environment.</p>
Serbia	<p><b>Article 74 Healthy environment:</b>  Everyone shall have the right to healthy environment and the right to timely and full information about the state of environment.</p> <p>Everyone, especially the Republic of Serbia and autonomous provinces, shall be accountable for the protection of environment.</p> <p>Everyone shall be obliged to preserve and improve the environment.</p> <p><b>Article 97:</b>  The Republic of Serbia shall organise and provide for:  <b>9.</b> sustainable development; system of protection and improvement of environment; protection and improvement of flora and fauna; production, trade and transport of arms, poisonous, inflammable, explosive, radioactive and other hazardous substances;</p>
Slovak Republic	<p><b>Article 44:</b>  <b>1.</b> Every person shall have the right to favorable environment.</p>

	<p>2. Every person shall have a duty to protect and improve the environment and foster cultural heritage.</p> <p>3. No person shall imperil or damage the environment, natural wealth and cultural heritage beyond the limits set by law.</p> <p>4. The State shall be responsible for the economical use of natural resources, for ecological balance and an effective environmental policy, and shall ensure protection of determined species of wild plants and wild animals.</p> <p>5. Details on the rights and duties according to paragraphs 1 to 4 shall be laid down by a law.</p> <p><b>Article 45:</b> Every person shall have the right to full and timely information on the environmental situation, and reasons and consequences thereof.</p>
Slovenia	<p><b>Article 72 (Healthy Living Environment):</b> Everyone has the right in accordance with the law to a healthy living environment.</p> <p>The state shall promote a healthy living environment. To this end, the conditions and manner in which economic and other activities are pursued shall be established by law.</p> <p>The law shall establish under which conditions and to what extent a person who has damaged the living environment is obliged to provide compensation.</p> <p>The protection of animals from cruelty shall be regulated by law.</p>
Spain	<p><b>Article 45:</b> 1. Everyone has the right to enjoy an environment suitable for personal development, as well as the duty to preserve it. 2. The public authorities shall safeguard rational use of all natural resources with a view to protecting and improving the quality of life and preserving and restoring the environment, by relying on essential collective solidarity. 3. Criminal or, where applicable, administrative sanctions, as well as the obligation to make good the damage, shall be imposed, under the terms established by the law, against those who violate the provisions contained in the previous clause.</p>
Sweden	<p><b>Article 2:</b> [...] The public institutions shall promote sustainable development leading to a good environment for present and future generations.</p>
Switzerland	<p><b>Art. 73 Sustainable development:</b> The Confederation and the Cantons shall endeavour to achieve a balanced and</p>

	<p>sustainable relationship between nature and its capacity to renew itself and the demands placed on it by the population.</p> <p><b>Art. 74 Protection of the environment:</b></p> <p>1. The Confederation shall legislate on the protection of the population and its natural environment against damage or nuisance.</p> <p>2. It shall ensure that such damage or nuisance is avoided. The costs of avoiding or eliminating such damage or nuisance are borne by those responsible for causing it.</p> <p>3. The Cantons are responsible for the implementation of the relevant federal regulations, except where the law reserves this duty for the Confederation.</p> <p><b>Art. 89 Energy policy:</b></p> <p>1. Within the scope of their powers, the Confederation and Cantons shall endeavour to ensure a sufficient, diverse, safe, economic and environmentally sustainable energy supply as well as the economic and efficient use of energy.</p> <p><b>Art. 104 Agriculture:</b></p> <p>3. The Confederation shall organise measures in such a manner that the agricultural sector fulfils its multi-functional duties. It has in particular the following powers and duties:</p> <p>b. encouraging by means of economically advantageous incentives methods of production that are specifically near-natural and respectful of both the environment and livestock;</p> <p>d. protecting the environment against the detrimental effects of the excessive use of fertilisers, chemicals and other auxiliary agents;</p> <p><b>Art. 120 Non-human gene technology:</b></p> <p>1. Human beings and their environment shall be protected against the misuse of gene technology.</p> <p>2. The Confederation shall legislate on the use of reproductive and genetic material from animals, plants and other organisms. In doing so, it shall take account of the dignity of living beings as well as the safety of human beings, animals and the environment, and shall protect the genetic diversity of animal and plant species.</p>
Turkey	<p><b>ARTICLE 56.:</b></p> <p>Everyone has the right to live in a healthy, balanced environment.</p> <p>It is the duty of the State and the citizens to improve the natural environment, and to prevent environmental pollution.</p>



	[...]
Ukraine	<p><b>Article 50:</b> Everyone has the right to an environment that is safe for life and health, and to compensation for damages inflicted through the violation of this right.</p> <p>Everyone is guaranteed the right of free access to information about the environmental situation, the quality of food and consumer goods, and also the right to disseminate such information. No one shall make such information secret.</p>
United Kingdom	