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Committee on Social Affairs, Health and Sustainable Development

Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe

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Report¹

A. Draft resolution²

1. The global vision of contemporary human rights protection has evolved significantly in the last decade. While the notion of sustainable development has slowly made its way into policy making worldwide, our understanding of the environment as a crucial factor for human development and human rights has brought new legal challenges into focus for the member States of the Council of Europe. Environmental pollution, loss of biodiversity and the climate crisis are making the people and the planet sick, leading to premature deaths in the current generation and stealing viable living space from future generations.

2. These novel threats to human life, well-being and health no longer stem only from national governments' failure to uphold civil and political rights, but also their lack of action to prevent cumulative harm to individuals from environmental degradation due to the commercial exploitation of nature. The current situation increasingly gives rise to both violations of fundamental rights and legal disputes.

3. The Parliamentary Assembly notes that already in 1972, the Stockholm Declaration of the UN Conference on the Human Environment explicitly linked environmental protection and first generation human rights, indirectly referring to the right to a healthy environment. Since then, about half the countries of the world have recognised the right to a healthy environment in their constitutions, including 32 Council of Europe member States. The right to a healthy environment is also recognised through a series of regional agreements and arrangements worldwide – with the exception of the European region.

4. The Assembly believes that the European vision of contemporary human rights protection could nevertheless become a benchmark for ecological human rights in the 21st century, if action is taken now. So far this vision has been limited to civil and political rights enshrined in the European Convention on Human Rights and its Protocols (ECHR, ETS No. 005) and socio-economic rights recognised in the European Social Charter (ESC, ETS No. 035 and 163).

5. The Assembly notes that the ECHR does not make any specific reference to the protection of the environment, and the European Court of Human Rights (the "Court") can thus not deal effectively enough with this new generation human right. The Assembly's call for action, in particular in Recommendation 1885 (2009) on "Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment", was unfortunately not followed by the Committee of Ministers.

6. The Court's case law provides for indirect protection of a right to the environment by sanctioning only environmental violations that simultaneously result in an infringement of other human rights already recognised in the Convention. The Court thus favours an anthropocentric and utilitarian approach to the environment which prevents natural elements from being afforded any protection *per se*. The Assembly encourages the Council of Europe to recognise, in time, the intrinsic value of nature and ecosystems in the light of the interrelationship between human societies and nature.

7. The Assembly is convinced that the Council of Europe as the European continent's leading human rights and rule of law organisation should stay proactive in the evolution of human rights and adapt its legal framework accordingly. A legally binding and enforceable instrument, such as an additional protocol to the

¹ Reference to Committee: Reference no. 4516 of 26 June 2020.

² Draft resolution adopted by the Committee with a large majority on 9 September 2021.

ECHR, would finally give the Court a non-disputable base for rulings concerning human rights violations arising from environment-related adverse impacts on human health, dignity and life.

8. The Assembly considers that an explicit recognition of a right to a healthy and viable environment would be an incentive for stronger domestic environmental laws and a more protection-focused approach by the Court. It would make it easier for victims to lodge applications for remedies and would also act as a preventive mechanism to supplement the currently rather reactive case law of the Court.

9. Recognising an autonomous right to a healthy environment would have the benefit of allowing a violation to be found irrespective of whether another right had been breached and would therefore raise the profile of this right. In this context, the Assembly notes that the United Nations (UN), in its studies and resolutions on human rights and the environment, mainly refers to the human rights obligations linked to the enjoyment of “a safe, clean, healthy and sustainable environment”. The Council of Europe should be encouraged to use this terminology for its own legal instruments – though it may want to go even further, and guarantee the right to a “decent” or “ecologically viable” environment.

10. The Assembly also supports drafting an additional protocol to the ESC on the right to a safe, clean, healthy and sustainable environment. The ESC and the ECHR are two complementary and interdependent systems, each of which has its own specific features, hence the need for separate additional protocols.

11. The Assembly moreover believes that there is a growing need to ensure genuine co-responsibility towards the prevention and alleviation of environmental harm by both States and non-State actors, including corporate actors. As the latter’s self-regulation alone does not always serve the common interest, State regulation has a major role to play. States should therefore strengthen corporate environmental responsibility, not least through the revision of Committee of Ministers Recommendation CM/Rec(2016)3 on Human Rights and Business, and engagement in the work of the UN “open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights on a legally binding instrument on business activities and human rights.”

12. The Assembly also recognises the particular responsibility that present generations bear towards future generations. The irreversible damage to nature and the short- and long-term effects of the climate crisis will adversely affect future generations, which must be protected accordingly. In order to entrench the principle of transgenerational responsibility, equity and solidarity, new rights and duties are needed. The Assembly thus supports recognising the right of future generations to a healthy environment and humanity’s duties towards living beings. Among these, the duty of non-regression meets the requirement for transgenerational equity by helping to counter growing environmental degradation and by ensuring a degree of legal certainty with respect to environmental law.

13. While the threats of environmental degradation and climate change are amongst the biggest challenges facing humanity today, the Assembly views the unfettered use of certain new, man-made technologies (such as artificial intelligence, nano technology and genetic engineering) as a human rights challenge. It therefore considers that the Council of Europe should prepare a “5P” convention on environmental threats and technological hazards threatening human health, dignity and life – in the spirit of the Stockholm Declaration. By preventing and prosecuting violations of the right to a safe, clean, healthy and sustainable environment, and protecting the victims, the contracting States would adopt and implement state-wide “integrated policies” that are effective and offer a comprehensive response to environmental threats and technological hazards, involving parliaments in holding governments to account on the effective implementation of environment-friendly pro-human rights policies.

14. In the light of the above considerations, the Assembly recommends to the member States of the Council of Europe:

14.1. to build and consolidate a legal framework – domestically and at European level – to anchor the right to a safe, clean, healthy and sustainable environment, based on the UN guidance on this matter;

14.2. to support multilateral efforts concerning the explicit recognition and protection of the right to a safe, clean, healthy and sustainable environment through international and European law;

14.3. to participate in a political process under Council of Europe auspices aimed at preparing legally binding and enforceable instruments – an additional protocol to the ECHR, and an additional protocol to the ESC – in order to protect more effectively the right to a safe, clean, healthy and sustainable environment, as well as a “5P” convention on environmental threats and technological hazards threatening human health, dignity and life;

14.4. to strengthen corporate environmental responsibility of enterprises operating under their jurisdiction by setting up a dedicated binding legal framework that defines corporate responsibility for safeguarding human health, the right to a safe, clean, healthy and sustainable environment, and environmental integrity, and by making them reduce the harmful environmental footprint of their commercial activities;

14.5. to contribute to the revision of the Committee of Ministers Recommendation CM/Rec(2016)3 on Human Rights and Business in order to determine and incorporate the requirements of corporate environmental responsibility.

15. The Assembly urges national parliaments to advocate for adequate protection of the right to a safe, clean, healthy and sustainable environment at national, European and global level. It invites them to hold extensive public consultations on this matter and to proceed with the adoption of laws and the initiation of the legal instruments necessary for the completion of the comprehensive coverage of this right, and to monitor their effective implementation.

B. Draft recommendation³

1. The Parliamentary Assembly refers to its Resolution ... (2021) on “Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe” and reiterates the need for the Council of Europe to modernise its standard setting activity so as to embrace the new generation of human rights. The Assembly is highly concerned by the speed and extent of environmental degradation, loss of biodiversity, and the climate crisis that directly impact on human health, dignity and life. It considers that it is high time for the Council of Europe to show ambition and strategic vision for the future by facing up to this major transformative challenge for human rights and securing their enhanced protection in the era of systemic environmental threats to the present and future generations.

2. The Assembly notes that harmful environmental impacts are increasingly affecting the enjoyment of first and second generation human rights by individuals and society at large, hurting the shared values that the Council of Europe is called upon to defend. Those impacts are being recognised through environmental litigation at national level across Europe and beyond; they constitute a compelling case for consolidating and updating the Council of Europe legal arsenal, and linking up national action with commitments under the relevant international treaties, such as the UNFCCC (United Nations Framework Convention on Climate Change) and the Paris Agreement.

3. To this end, the Assembly recommends that the Committee of Ministers:

3.1. draw up an additional protocol to the European Convention on Human Rights (ECHR, ETS No. 005) on the right to a safe, clean, healthy and sustainable environment, based on the terminology used by the United Nations and drawing on the text reproduced below, which is an integral part of this recommendation. The inclusion of this right in the ECHR would establish the clear responsibility of member States to maintain a good state of the environment that is compatible with life in dignity and good health and the full enjoyment of other fundamental rights; this would also support a much more effective protection of a safe, clean, healthy and sustainable environment at national level, including for generations to come;

3.2. draw up an additional protocol to the European Social Charter (ESC) on the right to a safe, clean, healthy and sustainable environment; the inclusion of this right in the ESC would make it possible to recognise the interrelationship between protection of social rights and environmental protection; it would also enable non-governmental organisations to lodge collective complaints on environmental issues;

3.3. launch the preparation of a feasibility study for a “5P” convention on environmental threats and technological hazards threatening human health, dignity and life; the drawing-up of such a convention would afford an opportunity to incorporate therein the principles of prevention, precaution and non-regression, which are necessary if humanity's right to a healthy environment is to be properly protected; the convention could also include a supranational monitoring mechanism modelled on independent expert committees such as GRETA (the Group of Experts on Action against Trafficking in Human Beings) and GREVIO (The Group of Experts on Action against Violence against Women and Domestic Violence);

3.4. revise Recommendation CM/Rec(2016)3 on Human Rights and Business with a view to strengthening corporate environmental responsibility for the adequate protection of the human right to a safe, clean, healthy and sustainable environment.

³ Draft recommendation adopted by the Committee with a large majority on 9 September 2021.

**Text of the proposal for an additional protocol to European Convention on Human Rights,
concerning the right to a safe, clean, healthy and sustainable environment**

Preamble

The member States of the Council of Europe and other High Contracting Parties to the ECHR, signatories hereto,

4. Considering the urgent nature of the environmental crisis and its consequences for biodiversity, ecosystems and present and future generations;
5. Recognising the interrelationship between environmental protection and human rights;
6. Taking into account the intrinsic value of nature and the paramount importance of the duties and obligations of present generations towards the environment and future generations;
7. Noting that every human being "has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being" and that he bears a "solemn responsibility to protect and improve the environment for present and future generations" (Principle 1 of the Stockholm Declaration of 1972);
8. Noting that the right to a safe, clean, healthy and sustainable environment requires going beyond an approach based on individual rights alone;
9. Being resolved to define the right to a healthy environment as an autonomous human right;

Have agreed as follows :

Section I — Definition

Article 1

10. For the purposes of this Additional Protocol, "the right to a safe, clean, healthy and sustainable environment" means the right of present and future generations to live in a non-degraded, viable and decent environment that is conducive to their health, development and well-being.

Section 2 — General principles

Article 2: Principle of transgenerational responsibility, equity and solidarity

11. Every generation has a duty to protect the environment and biodiversity and to prevent any irreparable and irreversible damage to life on Earth, so as to ensure the right of subsequent generations to live in a safe, clean, healthy and sustainable environment.
12. Every generation shall ensure that natural resources are used and managed in an environmentally sustainable manner, and that scientific and technological progress in all areas does not harm life on Earth.
13. Every generation is responsible for protection of the environment and has a duty to:
 - a. prevent environmental damage;
 - b. remedy environmental damage.

Article 3: Principle of environmental non-discrimination

14.
 - a. No one shall be discriminated against on account of his/her belonging to a particular generation.
 - b. Each High Contracting Party shall see to it that discrimination is prohibited and shall ensure equal and effective protection against discrimination to enable all individuals, groups and peoples to enjoy a safe, clean, healthy and sustainable environment.
 - c. Each High Contracting Party shall ensure that additional measures are taken to protect the rights of persons who are more vulnerable to or particularly threatened by environmental harm.

Article 4: Principles of prevention, precaution, non-regression and *in dubio pro natura*

15. Where a risk of harm to the environment and biodiversity has been established, measures for preventive action and rectification, as a priority at source, shall be put in place to avoid the occurrence of environmental damage.

16. Where there are threats of severe damage to the environment or to human, animal or plant health, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent the degradation of the environment and biodiversity.

17. a. Any rolling back of legal protection of the environment or of access to environmental justice shall be prohibited;

b. National and international provisions on the environment may be subject only to continuous improvement, having regard to the current state of scientific and technological knowledge.

18. In case of doubt, all matters before courts, administrative agencies and other decision-makers must be resolved in a way most likely to favour the protection and conservation of nature, with preference to be given to alternatives that are least harmful to the environment.

Section 3 — Substantive right

Article 6: Right to a safe, clean, healthy and sustainable environment.

19. Everyone has the right to a safe, clean, healthy and sustainable environment.

Article 7: Procedural rights

20. a. Everyone is entitled to access information relating to the environment held by public authorities, without having to prove an interest.

b. If a project, programme or policy has an impact on the environment and biodiversity, everyone shall be entitled to be consulted in advance in order to be heard by the decision-making bodies regarding the authorisation and development of that project.

c. Everyone has the right of access to justice in matters relating to the environment.

d. Everyone whose rights as set forth in this Protocol are violated shall have an effective remedy.

Section 4 — Implementation of the protocol

Article 8

21. In the interpretation of the right set forth in Article 6 of this Protocol, the principles of international and European environmental law shall be applied.

22. The exercise of the rights set forth in this Protocol may be subject only to such formalities, conditions and restrictions as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or for the protection of the rights and freedoms of others.

Section 5 — Final clauses

Article 9

23. No derogation from the provisions of this Protocol, with the exception of Article 7 b thereof, shall be made under Article 15 of the Convention.

Article 10

24. No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol, with the exception of Article 7 b thereof.

Article 11

25. This Protocol shall be open for signature by the member States of the Council of Europe and the other High Contracting Parties to the ECHR. It shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 12

26. a. This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 18.

b. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

The Secretary General of the Council of Europe shall notify the member States of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Protocol;
- d. any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg on [date], in English and French, both texts being equally authentic, in a single copy, which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

C. Explanatory memorandum by Mr Simon Moutquin, rapporteur

1. Introduction

1. In May 2020, the Committee on Social Affairs, Health and Sustainable Development tabled a motion for a resolution on “Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe.”⁴ Whilst environmental degradation escalates, the scientific evidence is mounting of its detrimental effects on the health of Europeans, but the explicit recognition of the right to a healthy environment is lacking as a basis for more resolute action at both European and national levels. To address this concern, the motion stresses the importance of building the case for more ambitious action by the Council of Europe in this field. The motion was subsequently referred to our Committee for report, and I was appointed rapporteur on 6 July 2020 (another motion for a resolution on “Artificial intelligence and climate change”⁵ was thereafter transmitted to our Committee so as to be taken into account in this context).

2. In response to the threats to climate and biodiversity, the Georgian Presidency of the Committee of Ministers of the Council of Europe (27 November 2019 – 15 May 2020) made human rights and environmental protection its overriding priority. This objective has stayed prominent during the Presidencies of Greece and Germany. The President of the Parliamentary Assembly, Mr Rik Daems, has made this a priority of the Assembly since his election in January 2020. The strong political will in the field thus offers unique momentum for launching preparatory work on a legally binding instrument to protect the human right to a healthy environment. This European initiative could pave the way to building a global consensus on the need for enhanced international co-operation on the protection of the environment and “green” human rights. Europe should keep its leadership in championing fundamental rights with a “green perspective.”

3. In February 2020, the Georgian Presidency organised a high-level conference in Strasbourg on the protection of the environment from a human rights perspective.⁶ The conference examined the potential of the Council of Europe to work in the human rights field to tackle the environmental emergency and identify ways of helping European governments to address the challenge. The introductory report of the conference⁷ called for the Council of Europe to act as a leader in the field of fundamental rights protection. Failing to do so, piecemeal initiatives would eventually be taken at national level, and the legitimacy of the Council of Europe would be seriously affected as a result.⁸

4. The European vision of contemporary human rights protection could become a benchmark for ecological human rights in the 21st century. In this context, we are greatly encouraged by a landmark ruling of the Dutch Supreme Court that upheld an earlier ruling in the Urgenda Climate Case against the country’s government asking it to do much more to cut greenhouse gas emissions. The Supreme Court notably referred to individual nations’ direct obligations under articles 2 and 8 of the European Convention on Human Rights (ECHR, covering the right to life and the right to private and family life).⁹

5. During the past decades, the Assembly has issued numerous recommendations on matters related to the right to a healthy environment. It notably stressed that every person has the fundamental right to an environment and living conditions conducive to their good health, well-being and full development of the human personality. It stated, already in 2003, that in view of developments in international law on both the environment and human rights, as well as in European case law (especially that of the European Court of Human Rights, “the Court” henceforth), the time had come to consider legal ways in which the human rights protection system could contribute to the protection of the environment.¹⁰

6. In 2009, the Assembly recommended that the Committee of Ministers draw up an additional protocol to the ECHR, explicitly recognising “the right to a healthy and viable environment,”¹¹ based on similar initiatives that had already occurred in the past. In the Recommendation, the Assembly reaffirmed its commitment to issues regarding the environment and considered “it not only a fundamental right of citizens to live in a healthy environment but [also] a duty of society as a whole and each individual in particular to pass on a healthy and

⁴ See [Doc. 15108](#).

⁵ See [Doc. 15068](#).

⁶ [High-level Conference on Environmental Protection and Human Rights](#), held on 27 February 2020 in Strasbourg

⁷ [Elisabeth Lambert: Introductory Report to the High-Level Conference on Environment Protection and Human Rights](#)

⁸ [Elisabeth Lambert: Introductory Report to the High-Level Conference on Environment Protection and Human Rights](#), p. 30

⁹ See <https://www.urgenda.nl/en/themas/climate-case/> and the article on “[Dutch supreme court upholds landmark ruling demanding climate action](#)”, 20 December 2019, *The Guardian*.

¹⁰ [Recommendation 1614 \(2003\) on “Environment and human rights”](#).

¹¹ [Recommendation 1885 \(2009\) on “Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment”](#).

viable environment to future generations". To this end, the Assembly has relentlessly demanded enhanced action by member States to address the challenges of climate change, environment-related health hazards and environmentally-induced migration.¹²

7. However, despite the political and legal initiatives taken both nationally and internationally, environmental protection is still very inadequately guaranteed to this day. The most commonly adduced counterargument at the time was the uncertainty as to the actual existence of a right conferred on individuals, or, at the very least, a right that was not adequately defined. That does not make environmental threats to the full enjoyment of human rights any less severe for individuals; rather, it is a matter of defining the terms in question and carefully preparing a legal instrument granting the rights.

8. The "healthy" environment can be described as a "good-quality" one. The right to a "good-quality" environment is to be understood as embracing, amongst other things, the right to live in a pollution-free environment which addresses directly the alarming fact that poor air quality leads to over half a million deaths in Europe alone every year.¹³ In the light of this, the right to clean air could be seen just as legitimate as the right to clean water, since both are essential to life, health, dignity and well-being.¹⁴ In her study, professor Élisabeth Lambert insists on the need to recognise an individualised right, both personal and collective, to a "decent" or "ecologically viable" environment – a broader concept than that of the right to a "healthy environment" and one that embraces an eco-centric view and an intergenerational approach. According to her, the term "right to a healthy environment" is restrictive and covers only environmental damage affecting human health or well-being. The right to a "decent" environment, however, as recognised also by the Committee of Ministers in 2004,¹⁵ means understanding the link between fundamental rights, our environment and sustainable development, and it also covers protection of the natural environment in line with today's ecological outlook.

9. The extent to which environmental human rights are recognised has a whole range of practical consequences. Whether it is a "good-quality" one, "viable" or "healthy", at least, the explicit inclusion of this right has had the positive effect of strengthening the legislative and judicial arsenal at national level in about half the countries of the world that recognise the right to a healthy environment in their constitutions; those countries include 32 Council of Europe member States.¹⁶ As it were, the right to a healthy environment is recognised through a series of regional agreements and arrangements worldwide.¹⁷

10. We should note that the United Nations (UN), in its studies and resolutions on human rights and the environment, mainly refers to the human rights obligations linked to the enjoyment of "a safe, clean, healthy and sustainable environment". This Assembly's committees will therefore seek to use this terminology. In the context of the preparation of this report, on 1 December 2020, the Committee also held an online hearing with

¹² Including through Recommendation 1863 (2009) on "Environment and health: better prevention of environment-related health hazards"; Resolution 1976 (2014) on "Climate change: a framework for a global agreement in 2015"; Resolution 2210 (2018) on "Climate change and implementation of the Paris Agreement"; and Resolution 2307 (2019) on "A legal status for "climate refugees"".

¹³ See also [Resolution 2286 \(2019\) on Air pollution: a challenge for public health in Europe](#).

¹⁴ [Élisabeth Lambert: Introductory Report to the High-Level Conference on Environment Protection and Human Rights](#), p. 17

¹⁵ Environment and human rights, reply to Parliamentary Assembly Recommendation 1614 (2003) CM/AS(2004)Rec1614-final, 23 January 2004

¹⁶ Albania, Andorra, Angola, Argentina, Armenia, Azerbaijan, Bangladesh, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Comoros, Congo (Democratic Republic), Costa Rica, Cote d'Ivoire, Croatia, Cuba, Czech Republic, Dominican Republic, East Timor, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Georgia, Greece, Grenada, Guatemala, Guinea, Guyana, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Israel, Italy, Jamaica, Kenya, Korea (South), Kyrgyzstan, Latvia, Northern Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Mauritania, Mexico, Republic of Moldova, Mongolia, Montenegro, Morocco, Mozambique, Nepal, Netherlands, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Rwanda, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovak Republic, Slovenia, Somalia, South Africa, South Sudan, Spain, Sri Lanka, Sudan, Tanzania, Thailand, Togo, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, Uruguay, Venezuela, Vietnam, Zambia, Zimbabwe. (Source: the UN.)

¹⁷ This notably includes the African Charter on Human and Peoples' Rights of 1981 (with 53 participating States), the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol, Art. 11, para. 1), with 16 State parties; the Arab Charter on Human Rights of 2004 (Art. 38), binding 13 State parties; the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention, Art. 1), with 46 State parties and the European Union; the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement, Art. 4) opened for signature in September 2018, with 16 States having signed the Agreement (not yet in force); the Human Rights Declaration adopted by the ten States in the Association of Southeast Asian Nations in 2012 (para. 28 (f)). (Source: the UN.)

the UN Special Rapporteur on human rights and the environment, David R. Boyd, as well as with Catherine Le Bris, Researcher on international law of human rights and the environment at the CNRS (National Centre for Scientific Research) of France, and with child and youth activists from France and Azerbaijan.¹⁸

11. This report examines the different options for adopting new Council of Europe legal instruments granting the right to a healthy environment. The urgency of the problem cannot be overstated anymore: various types of environmental degradation are resulting in violations of substantive, first generation human rights, such as the right to life, to private and family life, the prohibition of inhuman and degrading treatment, and the peaceful enjoyment of the home, as clearly established by the ECHR, and the violation of the second generation right to health, as enshrined in the European Social Charter (ESC). The Council of Europe as the European continent's leading human rights and rule of law organisation should stay proactive in the evolution of human rights and adapt its legal framework accordingly. A legally binding and enforceable instrument, such as an additional protocol to the ECHR, would finally give the Court a fundamental base for rulings concerning these issues.

12. Moreover, considering proposals contained in the motion for a resolution on “Artificial intelligence and climate change,”¹⁹ this report also addresses the threat of climate change as the biggest challenge facing humanity, with new technologies such as artificial intelligence representing both a significant part of the aggravation of the problem and a possible solution. The report explores these questions and contributes proposals for solutions arising from the national and European context, notably by proposing the preparation of a “5P” type of convention.²⁰ The issue of “criminal and civil liability in the context of climate change” and a possibility of the Council of Europe adopting a new criminal law convention on harms to environment and human health is examined in a separate report by the Assembly's Committee on Legal Affairs and Human Rights.²¹

2. Evolving understanding of human rights

13. The ECHR was drafted in 1950 and entered into force in 1953. It was created after the Second World War, as the world united to agree on minimum standards of dignity to be afforded to all human beings, and thus granted protection of individual civil liberties against violations by the State. The Convention sets out in detail civil and political rights, such as the prohibition of torture, or the right to a fair trial. In the most established way of classifying human rights, these rights based mostly on political concerns are categorised as first-generation human rights. Economic, social and cultural rights were frequently mislabelled as “benefits”, meaning individuals had no basic claims to essentials like food and shelter.

14. During the Cold War, however, the European and global (through the UN Covenants) human rights standards developed in accordance with the spirit of their time. Socio-economic rights became increasingly a subject of international recognition. New demands and ideas about the meaning of a life of dignity evolved, as people realised that human dignity required more than the minimal lack of interference from the State (as guaranteed by civil and political rights). The ESC of the Council of Europe was opened for signature in 1961 and took effect in 1965. It was established to support the ECHR and to broaden the scope of protected fundamental rights to include social and economic rights, the so-called second-generation human rights.

15. The state of the world when the ECHR was drafted was very different from what it is now. Conditions such as extreme poverty, war, ecological and natural disasters have meant that there has been only very limited progress in respect of human rights in many parts of the world. The idea at the basis of the third generation of human rights is that of solidarity, and the rights embrace also collective rights of society or peoples. The right to a healthy environment is one of them and is for the benefit of present and future generations.

16. Besides the intergenerational aspects of such rights, currently living generations already face serious environmental and social crises at this very moment, making the threats the environmental issues are causing to the enjoyment of human rights very real. According to WHO (the World Health Organization), 24% of all global deaths are linked to the environment, which means roughly 13.7 million deaths a year.²² The UN special rapporteurs and independent experts warn that global climate warming “will adversely affect a wide range of human rights, including the rights to life, health, food, and water, among many others”;²³ it will render many

¹⁸ See the declassified minutes of this public hearing – document [AS/Soc \(2020\) PV 09add2](#).

¹⁹ [Motion for a resolution, Doc. 15068](#)

²⁰ The Ps stand for: **p**revention, **p**rosecution, (victim) **p**rotection, (integrated) **p**olicies, and the **p**arliamentary dimension.

²¹ The “doc” number will be added here when the report is published.

²² [WHO \(2018\): Preventing disease through healthy environments: a global assessment of the burden of disease from environmental risks](#)

²³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16049&LangID=E>

places uninhabitable, multiply violent conflicts and could result in, by 2050, up to 200 million climate refugees. Across Europe, air pollution “alone” causes at least 753 000 premature deaths annually and massively aggravates public health, including that of next generations.²⁴ Children face the highest risks from environmental hazards such as pollution, because even small exposures to chemicals in utero and in early childhood can result in lifelong disease, disability, premature death, as well as reduced learning and earning potential.²⁵ Moreover, a massive destruction of natural habitats induces ever greater proximity of wild species with human beings, with a growing risk of emergence of new zoonoses and pandemics. The recognition of this new generation of human rights is necessary and urgent – since without ensuring the appropriate conditions for societies, different types of obstacles will continue to stand in the way of realising the already fully recognised first- and second-generation human rights.

17. A pivotal aspect for the legal recognition of the interaction between human rights and the environment is in the 1972 Stockholm Declaration and Conference on the Human Environment, as well as 1992 Rio Declaration on Environment and Development.²⁶ In addition to linking the quality of the environment with first generation human rights, the 1972 declaration also indirectly refers to the right to a healthy environment: “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations”; “both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself.”

18. Although there is a clearly acknowledged link between human dignity and the protection of the environment, neither the ECHR nor the ESC are designed to provide a general protection of the environment as such, and they do not expressly guarantee a right to a healthy environment. The ECHR and the ESC indirectly offer a certain degree of protection with regard to environmental matters through the case law developed by the Court, and the recognition of the right to health in the ESC.²⁷

19. However, as the ECHR does not make any specific reference to the protection of the environment, the Court cannot deal effectively with several so-called new generation human rights, including the right to a healthy environment. The Court should have a clearer basis on which to work when ruling on the basis of connecting human rights to environmental issues. As highlighted in the previous chapter, the right to a healthy environment is already explicitly recognised in both international and regional conventions, and over 100 countries worldwide now have a constitutional right to a healthy environment, including the majority of Council of Europe member States. The incorporation of the right to a healthy environment in their laws and constitutions expresses these countries’ desire to give greater legal recognition to environmental rights.

3. Embracing the new generation of human rights: lessons to be drawn from environmental litigation

20. As was pointed out during the Committee’s hearing “For stronger action on climate change”, held on 1 December 2020,²⁸ environmental degradation increasingly gives rise to both violations of fundamental rights and legal disputes, including on climate change whose direct effects are already being felt by many people (especially farmers and climate refugees). The emblematic case of the *Urgenda* climate lawsuit (2015-2019) by civil society in the Netherlands “was the first in the world in which citizens established that their government has a legal duty to prevent dangerous climate change”.²⁹ UN High Commissioner for Human Rights Michelle Bachelet hailed the decision and stressed that “the Government of the Netherlands and, by implication, other governments have binding legal obligations, based on international human rights law, to undertake strong reductions in emissions of greenhouse gases”. The *Urgenda* ruling establishes “a clear path forward for concerned individuals in Europe – and around the world – to undertake climate litigation in order to protect human rights”.

²⁴ See PACE Resolution 2286 (2019) and report (Doc. 14888) on “Air pollution: a challenge for public health in Europe”.

²⁵ [WHO graphics](#)

²⁶ Declaration of the United Nations Conference on the Human Environment, Stockholm, 16 June 1972 and Rio Declaration on Environment and Development, Rio de Janeiro, 14 June 1992 – see <https://legal.un.org/avl/ha/dunche/dunche.html>

²⁷ Council of Europe (June 2021), 3rd edition, Manual on Human Rights and the Environment. The Council’s major legal instruments and the Court’s jurisprudence indirectly recognize the obligation and responsibility of member States to defend the right to life against environmental harms. The Court has indicated it has had to develop its case-law where environmental issues undermine the exercise of rights in the Convention such as right to life (Article 2), prohibition of inhuman or degrading treatment (Article 3), right to liberty and security (Article 5), right to a fair trial (Article 6), right to respect for private and family life and home (Article 8), freedom of expression (Article 10), freedom of assembly and association (Article 11), right to an effective remedy (Article 13) and protection of property (Protocol No. 1).

²⁸ See the declassified minutes of this public hearing – document [AS/Soc \(2020\) PV 09add2](#).

²⁹ See <https://www.urgenda.nl/en/themas/climate-case/>.

21. Inspired by the success of the Urgenda Climate Case, citizens of Ireland, Belgium, Canada, France, Columbia, Germany, India, Mexico, New Zealand, Pakistan, Peru, the Republic of Korea, Switzerland, the United Kingdom, the United States of America, and the European Union (EU)³⁰ have launched similar lawsuits³¹. In many of these cases, young people and children proclaim their constitutional rights to life, health, a healthy environment, equality and non-discrimination, drawing on the principle of intergenerational justice. Some of these cases evoke the national government's obligations towards the ECHR (Articles 2 and 8) and international climate agreements. In November 2020, the Court accepted the complaint by youth activists against 33 governments (EU countries plus Norway, the Russian Federation, Switzerland, the United Kingdom, Turkey and Ukraine).

22. The pressure on European governments to act on the climate crisis and continuous environmental degradation is thus ever-growing, and so does the pressure on the Council of Europe and its member States to explicitly recognise the new generation of human rights, notably the right to "a safe, clean, healthy and sustainable environment", not only through the case law of the Court, but also within the body of the treaty itself, via an Additional Protocol. Novel threats to human life, wellbeing and health no longer stem only from national governments' failure to uphold civil and political rights, but also their lack of action to prevent cumulative harm to individuals from environmental degradation due to the commercial exploitation of nature.

23. We have to call a spade a spade: environmental pollution, loss of biodiversity and the climate crisis are making the people and the planet sick, relentlessly leading to premature deaths in the present generation and stealing viable living space from future generations. As David R. Boyd, UN Special Rapporteur on Human Rights and Environment, pointed out during the hearing on 1 December 2020, Europe is now lagging behind all other regions, since it is the last not to afford the protection of the right to a healthy environment directly in supranational law such as the ECHR.

24. However, as Catherine Le Bris, Researcher on international law of human rights and the environment of CNRS (National Centre for Scientific Research) in France, noted at the same hearing, merely extending the protection of individual rights would not be enough to rise to the collective and intergenerational challenges of the climate crisis. Indeed, many lawyers agree that certain principles are essential to enshrining the right to a healthy environment through new legal instruments: eco-centrism, subjectivism, collective and transgenerational rights, as well as the precautionary principle, non-regressiveness and the inversion of the burden of proof. A brief overview of the international legal path towards the recognition of the link between human rights and the environmental protection is set out in the appendix.

4. Towards new legal instruments: recognising the right to a safe, clean, healthy and sustainable environment

25. If it was undisputable already in 2009 that a clean and healthy environment is integral to the enjoyment of human rights, such as the right to life, health, food and an adequate standard of living, such a claim is even more valid at present. Climate change is having a profound effect on the enjoyment of human rights by individuals and communities across the planet. Because neither the ESC nor the ECHR explicitly recognise the right to a healthy environment, this makes the European human rights instruments less satisfactory than all the other regional instruments.³² An explicit recognition of a right to a healthy environment would be an incentive for stronger domestic environmental laws and a more protection-focused approach by the Court. It would make it easier for victims to lodge applications for remedies, and would act as a preventive mechanism (whereas the case law is rather reactive). Recognising an autonomous right to a healthy environment would have the benefit of allowing a violation to be found irrespective of whether another right had been breached and would therefore raise the profile of this right.

4.1. Liability of corporate actors for environmental harm

26. Environmental harms by large, multinational corporations have become major issues of concern and have broad negative implications. Such corporations may, due to their huge monetary assets, even defeat the monetary capacities of some countries.³³ There is a need to prepare a mandatory instrument binding on states and businesses with a European compliance or monitoring mechanism and legally enforceable rights for individuals. Many governments and corporations are now providing strategies for environmental protection and

³⁰ Involving families from Portugal, Germany, France, Italy, Romania, Kenya, Fiji, and Sweden

³¹ To date, as concerns European countries, judgements have been delivered in Belgium, France and Germany (in addition to the *Urgenda* lawsuit in the Netherlands).

³² [Élisabeth Lambert: Introductory Report to the High-Level Conference on Environment Protection and Human Rights](#)

³³ Comparing the earnings of giant multinational corporations with the GDP of countries around the world, as reported by the IMF, companies like Walmart and Google have greater revenues than many countries, including several Council of Europe member States such as Belgium, Malta and Bosnia and Herzegovina.

economic growth in joint attempts. Public-private partnerships for sustainable development that have been in operation for several decades from the local to the international level are gaining importance with the implementation of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals. Yet, there is still too much “greenwashing” around us – without genuine co-responsibility towards the prevention and alleviation of environmental damage.

27. To make the right to a healthy environment effective, the rules of the game should not be set by free markets, corporations’ self-regulation, soft recommendations or general guidelines. Such rights should be granted to be binding and justiciable. Expert studies have questioned the effectiveness of environmental self-regulation by suggesting that its adopters might not necessarily perform better than non-adopters.³⁴ As self-regulation alone does not always serve the common interest, state regulation has a key role to play. States therefore need to strengthen corporate environmental responsibility, not least through the **revision of Committee of Ministers Recommendation CM/Rec(2016)3 on Human Rights and Business** and engagement in the work of the UN “open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights on a legally binding instrument on business activities and human rights”.³⁵

28. In recent years, we have witnessed several legal cases of climate justice involving corporate actors. For instance, more than ten cities, counties and states in the U.S. have taken Exxon, Chevron, BP, Royal Dutch Shell and similar energy giants to court, seeking reimbursements for taxpayers of the costs of adaptation measures related to climate change (including building sea walls, repairing damages from storms, or plans to phase out fossil fuels and move some vulnerable communities more inland). But claims by New York City and San Francisco have been rejected in appeal courts.³⁶ In Europe, oil giant Total, deemed responsible for 1% of global CO₂ emissions, was sued by 14 cities and civil society organisations for climate inaction in the first climate case in France; moreover, the company is sued also in Uganda over environmental destruction.³⁷ At the same time, big energy companies have also sued States (including Germany, Italy, the Netherlands) under the international agreement - the Energy Charter Treaty – claiming compensations for investments made or planned against the States’ push of pro-climate action that impacts energy companies.³⁸

29. With the expansion of the digital economy, high-tech enterprises face criticism for the massive and growing consumption of energy used to power their computing infrastructure. Although some such enterprises have made data centres more efficient and worked to ensure they are powered at least in part by renewable energy, the computing power required for artificial intelligence has increased about 300 000 times between 2012 and 2018. As more enterprises and institutions begin to use artificial intelligence, it is becoming obvious that technology will deepen the climate crisis. Policymakers need to take this trend into account through regulatory tools at national, European and international levels.

4.2. Additional Protocol to the ECHR

30. Drafting an **Additional Protocol to the ECHR** is probably the strongest option for building the case for more ambitious action by the Council of Europe in the field of environmental human rights. Embracing this option would be in line with the Assembly’s earlier recommendations, as well as recent proposals by the Commissioner for Human Rights and the current President of the Assembly. The additional protocol could build on the principles of what is seen as a “healthy”, “good-quality”, “decent” and/or “viable” environment, with a view to protecting human rights, health and dignity in the face of different threats environmental challenges are causing. An additional protocol would complete the terms on the right to a “safe, clean, healthy and sustainable environment” and draw inspiration, for instance, from the UN Framework Principles on Human Rights and environment.³⁹ It would make the right to a healthy environment binding on States and justiciable, including for individuals.

³⁴ Alex Marx (2019), “Public-Private Partnerships for Sustainable Development: exploring their design and its impact on effectiveness”; Nicole Darnall Stephen Sides (2008), “Assessing the Performance of Voluntary Environmental Programs: Does Certification Matter?”

³⁵ See PACE Resolution 2311 and Recommendation 2166 (2019) “Human rights and business – what follow-up to Committee of Ministers Recommendation CM/Rec(2016)3?”

³⁶ See <https://www.energyvoice.com/oilandgas/312073/oil-giants-win-climate-suit-as-judges-push-for-political-fix/>.

³⁷ See <https://www.euractiv.com/section/climate-environment/news/oil-giant-total-sued-for-climate-inaction-in-frances-first-climate-case/>.

³⁸ Article “Secretive Treaty allows Big Oil to sue for hundreds of billions to stop fossil fuel phase out” by Andy Rowel, 23 February 2021, <http://priceofoil.org/2021/02/23/secretive-treaty-allows-big-oil-to-sue-for-hundreds-of-billions-to-stop-fossil-fuel-phase-out/>. Allegedly, some 60% of resolved lawsuits were adjudicated in favour of investors (situation in early 2021).

³⁹ [United Nations Framework Principles on Human Rights and environment](#), 2018.

31. As already pointed out by the Assembly in 2009,⁴⁰ the ECHR does not mention the environment, nor the right to a healthy environment. The case law of the Court, based on the interpretation of articles Articles 2, 5 and 8 (most frequently evoked), can offer only indirect and incomplete environmental protection when the violation of another right expressly set out in the Convention is found. Such indirect protection via the case law is difficult to access and fully comprehend; it depends on the receptiveness and inclinations of judges and lawyers of the Court. At the same time, the case law of the Court proves that environmental harms have directly affected human rights already enshrined in the Convention.

32. Rather reactive and implicit norms do not provide adequate solutions or protection to individuals or the environment. Adopting an explicit, proactive human right to a healthy environment in Europe is, quite frankly, long overdue, and would allow a preventive approach that would focus on eliminating problems before they have a chance to appear. A proactive approach to the right to a healthy environment would effectively promote what is desirable and would encourage good behaviour – in terms of positive obligations by States under the ECHR, while having a preventive dimension of keeping legal risks from materialising.

33. As the President of the Court, Robert Spano, said at the “Human Rights for the Planet” Conference (held on 5 October 2020), the ECHR cannot be interpreted in a vacuum but in an organic process together with other instruments and developments in member States, with the case law being a good starting point. We now have to go in the direction that the European society wants and catch up with the other regions of the world. We now have a strong political momentum, as well as increasing support in the various parts of the Council of Europe and its member States, for moving to recognise a safe, clean, healthy and sustainable environment as a human right. We owe this right to European citizens, and by granting it explicitly we would make their governments more accountable.

34. I trust that the time has come to seriously reconsider the need to have an additional protocol to the ECHR in order to explicitly state the link between the environment and human rights. As the Assembly, we can propose to build on the past initiatives of this kind. Notably, a model additional protocol as set out in the PACE Recommendation 1201 (1993) on “Additional protocol on the rights of minorities to the European Convention on Human Rights” could serve as a reference to detail the Assembly’s proposal.

35. In the model additional protocol proposed, I have attempted to cover the more progressive legal principles recognised in many of our countries’ constitutions in a separate section entitled “general principles” (Articles 2 – 4), following the design of the draft protocol in Recommendation 1201 (1993): the principles of transgenerational responsibility, equity and solidarity, the principle of non-discrimination linked to the environment, and the preventive and precautionary principles, the principle of non-regression and *in dubio pro natura*. The model I am proposing foresees the consecration of only a single material right: **the right of every person to a safe, clean, healthy and sustainable environment** (Article 6), flanked by four rights of a procedural nature (Article 7), only one of which – the right to consultation – would be open to reservations or derogations.

36. I am aware of the excellent academic proposals of what such an Additional Protocol to the ECHR might contain⁴¹, however, I have only included those in my proposed model which fit within the framework of the Convention and the Court as it currently stands. This is because I believe that we need a panoply of legal instruments (see below), not just one, which complement each other – rather than trying to press everything into one Additional Protocol to the ECHR where it does not really fit.

4.3. Additional Protocol to the ESC

37. The ESC provides extensive protection of social rights and even serves as a reference for EU law. It does not include or recognise, however, humanity’s right to a safe, clean, healthy and sustainable environment, even though it is deeply connected to social rights. The Assembly has already called on the Committee of Ministers to prepare a new protocol to the revised ESC on the right to health, including the right to a healthy environment, in its Recommendation 1976 (2011) on the role of parliaments in the consolidation and development of social rights.

⁴⁰ See Recommendation 1885 (2009) and report (Doc. 12003) on Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment.

⁴¹ “This project takes into account both the individual and collective dimension of the right to the environment, protects the environment *per se* and not only for attacks conferring the status of victims on applicants, notes the importance of duties and retains specific features that justifies environmental litigation, including before the Strasbourg Court.” Article by Élisabeth Lambert: “How to reconcile protection due to Nature and a Human-Rights-based approach within the Council of Europe?”, to be published in a special edition of the *Revue Juridique de L’Environnement*, September 2021.

38. The deep-seated connection between social rights and environmental protection needs to be recognised in the ESC. Up to now, the European Committee of Social Rights' dynamic interpretation of Article 11 of the ESC, on the right to health, has made it possible to provide a degree of protection in environmental matters. Moreover, the Committee is also to be commended on its dynamic interpretation of Articles 2 (the right to just conditions of work), 3 (the right to safe and healthy working conditions) and 31 (the right to housing). It is this interpretation that has led to indirect recognition of a right to a healthy environment.

39. In the current environmental crisis, however, this alone will not suffice. Embedding a human right to a healthy environment in the ESC would contribute to better environmental protection, because it would allow some non-governmental organisations specialising in environmental protection to lodge collective complaints with regard to 16 States that have accepted the system of collective complaints provided for under the Additional Protocol to the ESC (ETS No. 158). This collective complaints procedure partly complements the judicial protection provided under the European Convention on Human Rights.

4.4. The option of a "5P" convention on environmental threats and technological hazards threatening human health, dignity and life

40. Some lawyers consider that "green" rights do not obey the same logic as civil and political rights on the one hand, and social and economic rights on the other. Thus, the recognition of ecological/environmental rights ought to take the form of a specific instrument. Recognition of this right from the ecocentric standpoint explained above should therefore be accompanied by inclusion of principles specific to this field, such as the principle of prevention, the precautionary approach (Principle 15 of the Rio Declaration) and the "polluter pays" principle, all of which are closely linked with the concept of environmental justice.⁴² The principle 15 is that "*where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation*", which works against arguments demanding overly waterproof evidence and causality for environmental harm when there has been a breach of the right to a healthy environment.

41. Given the complex and interconnected nature of the threats to human rights caused by environmental harm, the legal instrument addressing these issues should have a holistic approach. In addition to drafting an Additional Protocol to the ECHR and an Additional Protocol to the ESC, therefore, a **"5P" convention** should be considered. By preventing and prosecuting violations of the right to a safe, clean, healthy and sustainable environment, and protecting the victims, the contracting States would adopt and implement state-wide "integrated policies" that are effective and offer a comprehensive response to environmental threats and technological hazards, involving parliaments in holding governments to account on the effective implementation of environment-friendly pro-human rights policies.

42. Adopting a "5P" convention would provide a relevant international legal instrument broad in scope that would complement the Additional Protocols, including by fostering international co-operation in the environmental field and establishing a specific monitoring mechanism such as a group of independent experts. With a holistic approach, the "5P" convention could look not only at a healthy environment but also at other issues that are beyond the control of an individual; it essentially comes down to the right to life and human dignity. These issues could include, for instance, threats stemming from artificial intelligence, genetic manipulation and nano technology.

5. Conclusions: the proposed roadmap for action

43. Worldwide, scientific evidence is accumulating on the massive detrimental effects of environmental degradation on the health, dignity and wellbeing of humans and the stability of ecosystems. This is a boomerang effect of human economic activities with an excessive and toxic environmental footprint. The Council of Europe has played a pioneering role in strengthening the protection of human rights in a number of areas, such as in the field of bioethics. It is now time for it to face a major transformative challenge for human rights by securing their enhanced protection in the era of systemic environmental threats to the current and future generations. This calls for the explicit recognition of a human right to a safe, clean, healthy and sustainable environment – through policies and legal instruments, including legally binding and justiciable ones at Council of Europe level.⁴³

44. Harmful environmental impacts are increasingly affecting the enjoyment of first- and second-generation human rights by individuals and society at large, hurting the shared values that the Council of

⁴² Pedersen O. W. (2010), "Environmental principles and environmental justice", *Environmental Law Review* Vol. 12, No. 1, pp. 26-49.

⁴³ Amicus brief from the CIDCE (*Centre international de droit comparé de l'environnement*) and the Normandy Chair for Peace by Paul Baumann, Moustapha Fall, Émilie Gaillard, Michel Prieur, Marie Rota, 3 December 2020

Europe has a duty to defend. Those impacts are increasingly recognised through environmental litigation at national level across Europe and beyond; they constitute a compelling case for consolidating and updating the Council of Europe legal arsenal and linking up national action with commitments under the international treaties, such as the UNFCCC⁴⁴ and the Paris Agreement. This is also necessary so as to give clear signals to non-State actors (such as enterprises) about the direction of public policies at national, European and international levels.

45. To this end, I would recommend that the Parliamentary Assembly reiterate the need for the Council of Europe to elaborate an additional protocol to the ECHR without further delay, so as to give clear recognition of the human right to a “safe, clean, healthy and sustainable environment” based on the terminology adopted at the UN level. I also wish to propose the drafting of an additional protocol to the ESC, in order to establish the deep-seated connection between social rights and humanity’s right to a healthy environment. Last but not least, I would encourage launching preparations for a “5P” convention on environmental threats and technological hazards threatening human health, dignity and life, alongside work aimed at revising the Committee of Ministers Recommendation CM/Rec(2016)3 on Human Rights and Business with regard to the responsibility of non-State actors for preventing environmental degradation and violation of a human right to a “safe, clean, healthy and sustainable environment.”

46. To conclude, I would like to emphasise the need for these three legal instruments, which are essential to enshrine humanity’s right to a safe, clean, healthy and sustainable environment, to be developed in parallel. The nature of the instruments varies, so they will have specific implementation methods and different effects. Mutually complementary, they have distinctive protection and monitoring systems that could help address today’s environmental challenges, by guaranteeing a human right to a safe, clean, healthy and sustainable environment.

⁴⁴ United Nations Framework Convention on Climate Change

Appendix

The international community's legal path towards enhanced protection of the right to a healthy environment

The **Stockholm Declaration** of the UN Conference on the Human Environment in 1972 explicitly recognised the link between environmental protection and human rights. According to Principle 1 of the declaration "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being"; while the preamble states that "both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself." In addition to linking the quality of the environment with "conventional" human rights, the declaration also indirectly recognises the right to a healthy environment.

In 1992, the UN Conference on Environment and Development, informally known as the Earth Summit, produced the Rio Declaration on Environment and Development, often referred to as the **Rio Declaration**. This Declaration consisted of 27 principles intended to guide countries on sustainable development; it was signed by over 175 countries.

The same year, the **United Nations Framework Convention on Climate Change** (UNFCCC) was drafted seeking to reduce atmospheric concentrations of greenhouse gases, with the aim of preventing dangerous anthropogenic interference with the earth's climate system. It was extended by the **Kyoto Protocol** which was adopted in 1997 and entered into force in 2005.

In 1998, UNECE (United Nations Economic Commission for Europe) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, usually known as the **Aarhus Convention**, was launched at the Fourth Ministerial Conference as part of the "Environment for Europe" process. The Aarhus Convention establishes numerous rights of the public (individuals and their associations) regarding the environment. The Parties to the Convention (which include all Council of Europe member States) are required to make the necessary provisions so that public authorities (at national, regional, or local level) will contribute to these rights to become effective. This convention provides for access to environmental information (the right of everyone to receive environmental information that is held by public authorities), public participation in environmental decision-making and access to justice (the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general)⁴⁵ – the three pillars proclaimed in the Rio Declaration's Principle 10.⁴⁶ The Aarhus Convention has a rights-based approach: the public, both in the present and in future generations, have the right to know and to live in a healthy environment.⁴⁷

As for the Council of Europe, the right of access to some environmental information (concerning risks to life, health and well-being) has been recognised in some **case law of the Court**, but the right of access to environmental information in the broad sense is not explicitly accepted. Public participation rights in the decision-making process have been recognised in some cases, but here again only to the extent that activities seriously affect human health or life. Right of access to the courts is also restricted, by the constraints of Article 6(1), to "civil rights and obligations".⁴⁸

The 2010 UN Climate Change Conference represented key steps forward in capturing plans to reduce greenhouse gas emissions and to help developing nations protect themselves from climate impacts and build their own sustainable futures. The result of the conference, the **Cancun Agreements**, were a set of significant decisions by the international community to address the long-term challenge of climate change collectively and comprehensively over time and to take concrete action now to speed up the global response.⁴⁹

In March 2012 the Human Rights Council decided to establish a **mandate on human rights and the environment**, which (among other tasks) studies the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and promotes best practices relating to the use of human rights in environmental policymaking. Mr John Knox was appointed in August 2012 to serve as the Independent Expert and as the Special Rapporteur on human rights and the environment, and in March 2018, the Human

⁴⁵ <https://ec.europa.eu/environment/aarhus/index.htm>

⁴⁶ [Elisabeth Lambert: Introductory Report to the High-Level Conference on Environment Protection and Human Rights](#), p. 24

⁴⁷ <https://www.unece.org/env/pp/contentofaarhus.html>

⁴⁸ [Elisabeth Lambert: Introductory Report to the High-Level Conference on Environment Protection and Human Rights](#), p. 25

⁴⁹ <https://unfccc.int/tools/cancun/index.html>

Rights Council further extended the mandate and appointed Mr David. R. Boyd as the Special Rapporteur on human rights and the environment as of 1 August 2018.⁵⁰ The idea behind this was, that all human beings depend on the environment in which they live. A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation. Without a healthy environment, we are unable to fulfil our aspirations or even live at a level commensurate with minimum standards of human dignity.

In 2015, the United Nations General Assembly set and all UN Member States adopted **the Sustainable Development Goals (SDGs)**, as part of the 2030 Agenda for Sustainable Development setting out a 15-year plan to achieve the Goals. The SDGs are a universal call for action to end poverty, protect the planet and improve the lives and prospects of everyone, everywhere.⁵¹ The SDGs are closely related to numerous human rights that are at risk due to environmental harm.

In 2015, the **Paris Agreement** was launched within the United Nations Framework Convention on Climate Change (UNFCCC). The agreement deals with greenhouse-gas-emissions' mitigation, adaptation, and finance with a long-term temperature goal to keep the increase in global average temperature to well below 2°C (3.6°F) above pre-industrial levels, and to pursue efforts to limit the increase to 1.5 °C (2.7 °F), recognizing that this would substantially reduce the risks and impacts of climate change. The Paris Agreement contains **the first mention of human rights in a climate change treaty**.⁵² The preamble to the Paris Agreement includes an acknowledgement "*that climate change is a common concern of humankind*" and that "*Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights*". The latter statement, in particular, has no equivalent in the UNFCCC or in the Kyoto Protocol.

In May 2018, the United Nations General Assembly passed a resolution to adopt by 2022 a **Global Pact for the Environment** (or a political declaration). In the preamble to this draft pact, the parties acknowledge "the growing threats to the environment and the need to act in an ambitious and concerted manner at the global level to better ensure its protection."⁵³

The **Intergovernmental Panel on Climate Change (IPCC)**, an intergovernmental body of the UN, provides the world with objective, scientific information for understanding the risk of human-induced climate change. In 2018, IPCC published a **Special Report on Global Warming of 1.5°C** including over 6,000 scientific references and prepared by 91 authors from 40 countries. Its key finding is that meeting a 1.5°C (2.7°F) target is possible but would require "deep emissions reductions" and "rapid, far-reaching and unprecedented changes in all aspects of society". Furthermore, the report finds that "limiting global warming to 1.5°C compared with 2°C would reduce challenging impacts on ecosystems, human health and well-being."⁵⁴ Discussion and decision making on climate change has largely referred to this report ever since.

The **10 New Insights in Climate Science 2020 report** prepared by a consortium of 57 leading researchers from 21 countries for the UN (presented on 27 January 2021) lists key insights for policy makers, including profound effects of climate change on mental health, ecosystems' stability and dangers of permafrost melting, as well as stating that "going to court to defend human rights can be an essential climate action."⁵⁵

Lastly, on 9 August 2021, the first part of the IPCC's sixth report, due for release in the autumn 2022, was published. The initial findings of this report confirm the global aspect of climate change and provide irrefutable evidence of the gravity of the situation. As well as reiterating the influence of human activities on global warming, IPCC scientists now associate certain extreme events, such as heatwaves or heavy rainfall, with human activities. The frequency of extreme events is set to increase, as is their intensity. In the Summary for Policymakers prepared by the Working Group, various tipping points are identified such as the instability of the Antarctic ice sheet, the destabilisation of the Atlantic meridional overturning circulation (AMOC), or the dieback of forests that lose their capacity to absorb CO₂. Also, global warming of 1.5°C and 2°C will be exceeded during the 21st century, unless deep reductions in CO₂ and other greenhouse gas emissions occur in the coming decades.

⁵⁰ <http://srenvironment.org/un-mandate>

⁵¹ See <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law>.

⁵² B. Mayer (2016): Human Rights in the Paris Agreement

⁵³ Elisabeth Lambert: Introductory Report to the High-Level Conference on Environment Protection and Human Rights, p. 5

⁵⁴ <https://www.ipcc.ch/sr15/>

⁵⁵ See <https://unfccc.int/news/new-report-reveals-top-10-insights-in-climate-science-in-2020>.