UNITED NATIONS
HUMAN RIGHTS
SPECIAL PROCEDURES
SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

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Mandates of the Special Rapporteur on the human right to a clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of human rights in the context of climate change; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and the Special Rapporteur on the human rights to safe drinking water and sanitation

13 November 2024

Respected Committee of Ministers of the Council of Europe,

We, the UN Special Rapporteur on the human right to a clean, healthy and sustainable environment, the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change, the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and the UN Special Rapporteur on the human rights to safe drinking water and sanitation are writing to you regarding the process in the Council of Europe on the recognition of the right to a healthy environment.

Over the past five years the current and former Special Rapporteurs on the human right to a clean, healthy and sustainable environment have been closely following the discussion of the recognition of the right to a healthy environment by the Council of Europe. In this process they have contributed in multiple meetings organized by the Parliamentary Assembly and others, presenting to the Committee of Ministers, accompanying the Reykjavik process, and sharing comments on the feasibility study, among other initiatives. Recently, the current and former UN Special Rapporteurs on the human right to a clean, healthy and sustainable environment, published a collective op-ed regarding this issue.[1]

Based on this experience and knowledge, and aware of the important discussion and decision to be taken between November 25th and 29th by the Council of Europe's Steering Committee for Human Rights (CDDH), in line with the mandates given to us by the UN Human Rights Council, we respectfully write to you to encourage the Council of Europe to recognize the right to a healthy environment, through an additional Protocol to the European Convention on Human Rights.

Such a decision would be in line with the real and urgent needs of the region and the world; with the regional and national legal frameworks in Europe; and will also respond to the repeated demands by the European Parliament, and of the hundreds of organizations and movements who are advocating for such recognition.

[1] Astrid Puentes Riaño, David Boyd and John Knox, *Il faut inscrire le droit à un environnement sain dans le système des droits humains,* LaCroix, published on 5 November, 2024 in French and English.

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Firstly, in relation to the regional and global reality, as is well known and has been insistently highlighted by the IPCC, the IPBES and other scientific experts, humanity is currently facing a triple planetary crisis of intertwined climate change, biodiversity loss and toxic pollution, aggravated by systemic and historical inequalities. This is an existential and unprecedented crisis that requires unprecedented leadership, decisions and actions. Meanwhile, science also demonstrates that current efforts are far from achieving the necessary results.[2]

At the same time, the negative impacts of this crisis are increasingly evident and are already seriously affecting many corners of the planet, including in Europe, as evidenced by the recent High-Level Isolated Depression (DANA for its acronym in Spanish) in Valencia and other parts of Spain, causing hundreds of deaths, thousands of displaced people, and immense social and economic loss.

Secondly, the discussion on the recognition of the right to a healthy environment by the Council of Europe has been going on for years and has had important moments, including in 1990, 1999 and 2009, when the creation of an additional Protocol to the Convention recognizing this right was discussed. On these occasions, the proposal was rejected. Today, in view of the new proposal, we consider that the legal and policy progress in recognizing and implementing the human right to a healthy environment at all levels, and the compelling reality of the increasingly devastating and widespread impacts on the environment and human lives and wellbeing demand and demonstrate the need for such an additional Protocol.[3]

Most of the European States, i.e. 28 out of 46 (corresponding to 60%), recognize the right to a healthy environment in their national legislation, while 41 Member States recognize rights to access to information, participation and justice due to the ratification of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. In addition, all European States voted in favor of resolutions at the Human Rights Council (A/HRC/RES/48/13) and the UN General Assembly (A/RES/76/300), which recognized this right at the international level. This reflects an important regional consensus regarding the recognition of an international human right to a healthy environment.

The European Court of Human Rights, in its more than 300 decisions analyzing the relationship between human rights and the environment, in various aspects, has contributed to the understanding and evolution of the human rights obligations of States in environmental matters. However, it is evident that its function is limited by the series of rights explicitly recognized by the Convention. The European Court itself underscored the urgent need to expressly recognize the human right to a healthy environment,[4] which will allow States and the Court to ensure more effective and predictable analysis of the interdependence of human rights and the environment.

The decisions of national courts in European countries such as Portugal and Slovenia, as well as in national jurisdictions in other regions and in the Inter-American System,[5] have evidenced how the recognition of the healthy environment as a human right

[2] For example, the UN Environment Programme, Emissions Gap Report 2024.
[3] UN Doc A/79/270 –Overview of the implementation of the right to a clean, healthy and sustainable environment.
[4] ECtHR, Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, no. 53600/20, judgment (Grand Chamber) of 9 April 2024, para. 19.
[5] Letter sent by UN Special Rapporteurs Professor Boyd and Knox to the CDDH Drafting Group on Human Rights and Environment (CDDH-ENV), 10 November 2023.

has helped clarify the interdependence between the environment and other human rights and make progress in the implementation of both human rights law and environmental law.[6]

Considering everything mentioned above we reiterate the importance and the urgent need for the Council of Europe to finally recognize the human right to a clean, healthy and sustainable environment through an additional Protocol. This will demonstrate European leadership in the protection of human rights and the environment, including with regard to the protection of the human rights of children and young people in the context of climate change.[7]

We appreciate your attention and look forward to a positive decision that will give everyone in the European region a missing tool for effectively protecting their rights and advancing effective solutions for the triple planetary crisis we are facing.

Respectfully,

Astrid Puentes Riaño
Special Rapporteur on the human right to a clean, healthy and sustainable environment

Elisa Morgera
Special Rapporteur on the promotion and protection of human rights in the context of climate change

Marcos A Orellana
Special Rapporteur on toxics and human rights

Pedro Arrojo Agudo
Special Rapporteur on the human rights to safe drinking water and sanitation

[6] These reports include: A/HRC/37/59—Framework Principles on human rights and the environment; A/HRC/40/55—clean air; A/HRC/43/53—good practices; A/HRC/46/28—safe and sufficient water; A/HRC/49/53—non-toxic environments; A/74/161—a safe climate; A/75/161—healthy ecosystems and biodiversity; A/76/179—healthy and sustainably produced food; All of these reports are specifically referred to by the UN General Assembly in A/RES/76/300 (preambular paragraph 18), as well as by the UN Committee on the Rights of the Child in its General Comment 26 (paragraph 64). All thematic reports of the current and previous Special Rapporteurs are here: https://www.ohchr.org/en/special-procedures/sr-environment/annual-thematic-reports

[7] Recommendation CM/Rec(2024)6 of the Committee of Ministers to member States on young people and climate action adopted by the Committee of Ministers on 23 October 2024 at the 1510th meeting of the Ministers' Deputies.